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A
COMPLETE COLLECTION
OF
State Trials

AND
PROCEEDINGS FOR HIGH TREASON AND OTHER
CRIMES AND MISDEMEANORS

FROM THE
EARLIEST PERIOD TO THE YEAR 1783,
WITH NOTES AND OTHER ILLUSTRATIONS:

COMPILED BY
T. B. HOWELL, Esq. F.R.S. F.S.A.

AND
CONTINUED
FROM THE YEAR 1783 TO THE PRESENT TIME:

BY
THOMAS JONES HOWELL, Esq.

VOL. XXXIII.

[BEING VOL. XII. OF THE CONTINUATION]

57 GEORGE III....A. D. 1817—1 GEORGE IV....A. D. 1820.

L O N D O N:

LONGMAN, REES, ORME, BROWN & GREEN; J. M. RICHARDSON; KINGS-
BURY, PARBURY, & ALLEN; BALDWIN, CRADOCK, & JOY; E. JEFFERY
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AND BUDD & CALKIN.

1826.



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NOTICE.

BY the present volume, this Series of State Trials (terminating with the Reign of his late Majesty) is brought to a close; nor is there, at the present moment, any intention to continue the publication of Modern State Trials to a more recent period. Availing themselves, therefore, of the opportunity which thus presents itself, the Publishers have completed their arrangements for the early appearance of a GENERAL DIGESTED INDEX, embracing the contents as well of the First as of the Second Series.

In selecting from the very numerous cases which fall under the denomination of State Trials, those which form the Second Series, care has been taken to reject none the omission of which would be inconsistent with the general object of the work. Of those which have been omitted, some did not appear to be of sufficient importance to counterbalance the inconvenience of the great extension of the work which their insertion would have occasioned; and others, in so far as relates to material points, are fully reported elsewhere.

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698. Proceedings in the High Court of Justiciary at Edinburgh against ALEXANDER M'LAREN and THOMAS BAIRD, for Sedition, March 5th—7th: 57 GEORGE III. A. D. 1817.

HIGH COURT OF JUSTICIARY.

MARCH 5, 1817.

Present.

Rt. Hon. David Boyle, Lord Justice Clerk.
Lord Hermand.
Lord Gillies.
Lord Pitmilley.
Lord Reston.

Counsel for the Crown.

Rt. Hon. Alexander Maconochie, Lord Advocate [afterwards a lord of Session and Justiciary, with the title of Lord Meadowbank.]

James Wedderburn, Esq. Solicitor-General.

H. H. Drummond, Esq.

J. A. Maconochie, Esq.

H. Warrender, Esq. Agent.

Counsel for Alexander M'Laren.

John Clerk, Esq.

J. P. Grant, Esq.

James Campbell, Esq.

Mr. R. Morton, Agent.

Counsel for Thomas Baird.

Francis Jeffery, Esq.

Henry Cockburn, Esq.

J. S. Stewart, Esq.

Mr. A. Campbell, W. S. Agent.

Lord Justice Clerk. — Alexander M'Laren and Thomas Baird, attend to the indictment against you, which the clerk of Court will read.

"ALEXANDER M'LAREN, now or lately weaver in Kilmarnock, in the county of Ayr, and Thomas Baird, merchant there, you are indicted and accused, at the instance of Alexander Maconochie of Meadowbank, his majesty's advocate, for his majesty's interest: that albeit, by the laws of this and of every other well-governed realm, Sedition is a crime of a heinous nature, and severely punishable:

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yet true it is and of verity, that you the said Alexander M'Laren and Thomas Baird are both and each, or one or other of you, guilty thereof, actors or actor, or art and part: in so far as, you the said Alexander M'Laren did, at a public meeting, held at Dean-park, in the vicinity of Kilmarnock aforesaid, on the 7th day of December 1816, or on one or other of the days of that month, or of November immediately preceding, or of January immediately following, which meeting was attended by a great multitude of persons, chiefly of the lower orders, wickedly and feloniously deliver a speech, containing a number of seditious and inflammatory remarks and assertions, calculated to degrade and bring into contempt the government and legislature, and to withdraw therefrom the confidence and affections of the people, and fill the realm with trouble and dissension; in which speech there were the following or similar wicked and seditious expressions:—"That our sufferings are insupportable, is demonstrated to the world; and that they are neither temporary, nor occasioned by a transition 'from war to peace,' is palpable to all, though all have not the courage to avow it. The fact is, we are ruled by men only solicitous for their own aggrandizement; and they care no farther for the great body of the people, than they are subservient to their accursed purposes. If you are convinced of this, my countrymen, I would therefore put the question, are you degenerate enough to bear it? Shall we, whose forefathers set limits to the all-grasping power of Rome; shall we, whose forefathers, at the never to be forgotten field of Bannockburn, told the mighty Edward, at the head of the most mighty army ever trode on Britain's soil, 'Hitherto shalt thou come, and no farther;' shall we, I say, whose forefathers defied the efforts of foreign tyranny to enslave our beloved country, meanly permit,

B

In our day, without a murmur, a base oligarchy to feed their filthy vermin on our vitals, and rule us as they will? No, my countrymen. Let us lay our petitions at the foot of the throne, where sits our August Prince, whose gracious nature will incline his ear to listen to the cries of his people, which he is bound to do by the laws of the country. But, should he be so infatuated as to turn a deaf ear to their just petition, he has forfeited their allegiance. Yes, my fellow townsmen, in such a case, to hell with our allegiance." And you the said Alexander M'Laren did, shortly thereafter, deliver, or cause to be delivered, your said speech, in manuscript, to Hugh Crawford, printer in Kilmarnock, to be by him printed and published. And you the said Thomas Baird having been present at the said meeting, and having heard the said speech, and others of a similar tendency, delivered there, did, shortly thereafter, and in the course of the said months of December or January, wickedly and feloniously print, or cause or procure to be printed, at the printing-office of the said Hugh Crawford, in Kilmarnock aforesaid, a seditious tract or statement, intituled, "Account of the proceedings of the public meeting of the Burgesses and Inhabitants of the town of Kilmarnock, held on the 7th of December 1816, for the purpose of deliberating on the most proper method of remedying the present distresses of the country, with a full report of the speeches on that occasion;" which printed tract or statement did contain a number of seditious and inflammatory remarks and assertions, calculated for the purposes above mentioned; and, in particular, a report of the said speech of you the said Alexander M'Laren, with the passage aforesaid, in the same, or nearly the same terms; as also the following wicked and seditious passages, viz. page ninth,—"And a House of Commons—but the latter is corrupted; it is decayed and worn out; it is not really what it is called, it is not a House of Commons."—Page tenth—"The House of Commons, in its original composition, consisted only of commoners, chosen annually by the universal suffrage of the people. No nobleman, no clergyman, no naval or military officer, in short, none who held places, or received pensions from government, had any right to sit in that House.—This is what the House of Commons was, what it ought to be, and what we wish it to be; this is the wanted change in our form of government—the Commons House of Parliament restored to its original purity; and this, beyond a doubt, would strike at the root of the greatest part of the evils we groan under at the present day."—Page eleventh, "Is it any wonder, my friends, that this country is brought to its present unprecedented state of misery, when the rights of the people have been thus wantonly violated?"—Page twelfth, "But let us come nearer home. Look at the year 1793, when the debt amounted to two hundred and eleven millions, and the annual taxation to about eighteen millions;

when liberty began to rear her drooping head in the country; when associations were framed from one end of the kingdom to another, composed of men eminent for their talents and virtue, to assert their rights; when a neighbouring nation had just thrown off a yoke which was become intolerable—what did the wise rulers of this country do? Why, they declared war, not only against the French nation, but also against the friends of liberty at home."—Page twenty-ninth, "Our oppressors have taxed the very light of heaven; and they seem surprised and indignant that we should not bear the insupportable burden, with which folly, corruption, and avarice, have loaded us, without reluctance and complaint."—Page thirty-second, "Their reverend hirelings would convince you that you are suffering under the visitation of the Almighty, and therefore ought to be submissive under the chastening stroke."—Page thirty-fifth, "We have these twenty-five years been condemned to incessant and unparalleled slavery, by a usurped Oligarchy, who pretend to be our guardians and representatives, while, in fact, they are nothing but our inflexible and determined enemies."—"They have robbed us of our money, deprived us of our friends, violated our rights, and abused our privileges."—"At present we have no representatives; they are only nominal, not real; active only in prosecuting their own designs, and at the same time telling us that they are agreeable to our wishes."—And you the said Thomas Baird having obtained a number of copies of the said printed tract or statement, containing the said false, wicked, and seditious passages, and others of a similar tendency, and being altogether of a seditious nature, did, in the course of the said months of December and January, and of February immediately following, at your shop in Kilmarnock aforesaid, wickedly and feloniously sell, publish, and circulate, or cause to be sold, published, or circulated, many of the said copies thereof, at the price of fourpence each, or other small sum, one of which was then and there purchased by Hugh Wilson, weaver in Kilmarnock. And you the said Alexander M'Laren and Thomas Baird having been apprehended and taken before William Eaton, esq., sheriff-substitute of the county of Ayr, did, in his presence, at Kilmarnock, on the 26th day of February 1817, both and each of you emit and subscribe a declaration: which declarations, being to be used in evidence against each of you respectively, and the manuscript of nineteen pages, and the half sheet of paper, titled on the back, "No. 5." both referred to in the said declaration of you the said Thomas Baird, being to be used in evidence against you the said Thomas Baird, as also three copies of the printed tract, or statement, above mentioned, being to be used in evidence against both and each of you, will be lodged in due time in the hands of the clerk of the high court of justiciary, before which you are to be tried,

that you may have an opportunity of seeing the same. At least, times and places foresaid respectively, the said seditious speech was wickedly and feloniously delivered, containing the said or similar wicked and seditious expressions: and the said seditious tract or statement, containing the said seditious and inflammatory passages, and others of a similar tendency, was wickedly and feloniously printed, sold, published, and circulated, or caused or procured so to be, as above mentioned: and you the said Alexander M'Laren and Thomas Baird are both and each, or one or other of you, guilty thereof, actors or actor, or art and part. All which, or part thereof, being found proven by the verdict of an assize, before the lord justice general, the lord justice clerk, and lords commissioners of justiciary, you the said Alexander M'Laren and Thomas Baird ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming.

"H. HOME DRUMMOND, A. D."

LIST OF WITNESSES.

1. *William Eaton*, esquire, sheriff-substitute of Ayrshire.
2. *Thomas Weir*, sheriff-clerk-depute of Ayrshire.
3. *Alexander Murdock*, writer in Ayr.
4. *Andrew Fennie*, merchant in Kilmarnock.
5. *William Merrie*, wright there.
6. *Hugh Crawford*, printer there.
7. *Thomas Murray*, journeyman to the said Hugh Crawford.
8. *James Johnstone*, muslin-agent there.
9. *David Ramsay Andrews*, writer there.
10. *Hugh Wilson*, weaver there.
11. *James Samson*, weaver there.
12. *David Bow*, shopman to Thomas Baird, merchant in Kilmarnock.

H. HOME DRUMMOND, A. D.

LIST OF ASSIZE.

County of Edinburgh.

James Watson, of Saughton.
Charles Fraser, of Williamston.
Alexander Falconer, baker in Dalkeith.
William Crichton, glazier there.
William Watson, farmer, Middle-Kenleith.
John Dodds, farmer, Saughton-mill.
John Drysdale, farmer, Clermiston.

County of Haddington.

George Rennie, of Fantassie.
David Pringle, of Blegbie.
David Skirving, farmer at East-Garleton.
Peter Sheriff, farmer at Drem.
John Hislop, junior, grocer in Haddington.

County of Linlithgow.

Norman Sharp, younger of Houston.
John Stewart, of Binny.
James Gardner, junior, merchant in Bathgate.
John Calder, farmer at Drumcross.
John Russell, farmer at Mosside.

City of Edinburgh.

William Marshall, jeweller, South-bridge-street, Edinburgh.
Walter Lamb, upholsterer in Edinburgh.
Archibald M'Kinlay, haberdasher in Edinburgh.
John Barter, confectioner there.
Sharp Callender, clothier there.
William Pattison, junior, haberdasher in Edinburgh.
Andrew Mellis, haberdasher there.
John Pollock, insurance broker there.
James Howden, jeweller there.
John Drummond, manufacturer there.
Alexander Anderson, general-agent there.
James Spence, perfumer there.
Peter Brown, linen-draper there.
William Kennedy, glover there.
James Gilchrist, clothier there.
Charles Howden, shoemaker there.
Edward Gilchrist, haberdasher there.
James Virtue, Button-manufacturer there.
James Richmond, insurance-broker there.
James Stoddart, wine-merchant there.
Andrew Wauchope, turner there.

Town of Leith.

James Duncan, ship-owner in Leith.
James Harper, corn-merchant there.
Wm. Lindsay, wine-merchant there.
James Skinner, cooper there.
John Gowan, wood-merchant there.
Charles Murray, wright there.
John Somerville, tanner there.

AD. GILLIES.

D. MONYPENNY.

DAVID DOUGLAS.

Lord Justice Clerk.—Alexander M'Laren and Thomas Baird; What do you say to the libel? are you guilty or not guilty?

Panel.—Not guilty.

The following Defences had been given in.

DEFENCES for Alexander M'Laren, Weaver in Kilmarnock, to the Indictment at the instance of Alexander Maconochie of Meadowbank, his Majesty's Advocate, for his Majesty's interest, for Sedition.

"The panel has been employed from his early youth in his trade as a weaver. He has always preserved the most sober and orderly habits, and, if necessary he could bring forward complete proof of his uniform and steady loyalty. He never was engaged in any riot or disturbance whatever, and never was connected, or accused of being connected with any of the societies, or combinations of men formed for unlawful purposes, or whose objects have been regarded with suspicion. He was a volunteer in the Glasgow Highland regiment during the whole period of its establishment, and when the volunteer system was put an end to, he transferred his services to the local militia. During the greatest part of his service, he was a serjeant, a situation which he obtained by his good conduct.

"Of late years, the panel, among many others, lamented the distresses of the country, from which he himself had severely suffered in his situation and prospects. He therefore approved of the petitions, which were presented in such numbers to his royal highness the Prince Regent, and the two Houses of parliament, the object of which was to obtain relief.

"A meeting was held near Kilmarnock in the month of December last, at which a great multitude of people attended, for the purpose of considering of the expediency of petitioning his royal highness the Prince Regent, and the Houses of Parliament, upon the present distressed state of the country, and the subject of parliamentary reform. The panel was present at that meeting, and made a short speech, not in the terms alleged in the libel, but in other terms, which appeared to him to be warranted by law in such a case. The meeting was afterwards addressed by other persons; certain resolutions were agreed to; petitions were drawn out, addressed to the Prince Regent, and to the two Houses of parliament. These petitions having been signed by a great number of persons, were sent to London and presented. The petitions addressed to the two Houses of Parliament were presented, read, and ordered to lie on the table of each house. In his speech, the panel did nothing more than lawfully recommend the said petitions: and he denies that he is guilty of the crime of sedition.

"The panel took no charge whatever of printing the pamphlet produced with the libel; and he finds that his own speech is inaccurately reported.

"It is an evident misconception, that such a speech, spoken at a lawful meeting for lawful purposes, was calculated to degrade and bring into contempt the government and legislature, and to withdraw therefrom the confidence and affections of the people, and fill the realm with trouble and dissensions. If there are grievances or abuses, or such men as bad rulers, or bad ministers, those who complain against them, or petition against them, do only exercise their legal rights. The panel, while he was disposed to petition for redress of grievances, was filled with the same reverence for the legislature and all its different branches, and for the government of the country as established by law, that is impressed on the mind of every good subject.

"Under protestation to add and eik.

"JOHN CLERK.

"J. P. GRANT.

"JAMES CAMPBELL."

LIST OF EXCULPATORY WITNESSES.

Hugh Wilson, weaver, Kilmarnock.
James Samson, ditto, ditto.
James Johnstone, muslin-agent there.
John Kennedy, schoolmaster there.
John Blackwood, wool-spinner there.

DEFENCES for Thomas Baird, to the Indictment at the instance of his Majesty's Advocate for the Crime of Sedition.

"The panel denies that he is guilty of the crime charged against him. He was not a speaker at the meeting mentioned in the indictment, and neither spoke nor wrote any of the words there set forth. He also denies that he printed or published any of the said words; and if any circumstances shall be proved tending to connect him with the publication or sale thereof, he has no doubt, both from the tenor of the said words and the nature of his concern with them, that it will be apparent that he is entirely guiltless of the crime here charged.

"Under protestation to add and eik.

"F. JEFFREY.

"H. COCKBURN,

"J. S. STEWART."

LIST OF EXCULPATORY WITNESSES.

John Andrews, chief magistrate of Kilmarnock.
David Ramsay Andrews, writer there.
Walker Andrews, writer there.
Andrew Finnie, merchant there.
James Johnstone, muslin agent there.
John Brown, writer there.
Bailie William Brown, manufacturer there.
John Willie, assessor of taxes there.
Robert Howie, merchant there.
Thomas Murray, printer there.
The Rev. *James Kirkwood*, relief minister there, residing at Riccarton.

Lord Justice Clerk.—Have the counsel for the panels any objections to state to the relevancy of this indictment?

Mr. Campbell.—I appear on behalf of the panel, Alexander M'Laren. It is not my intention to state any objections to the relevancy of the libel, but to explain to the Court and Jury the nature of the concern which he had in the transactions now brought before this Court. At the same time, it is proper I should state, that we who are his counsel hold it to be the undoubted law—and law which has never been questioned in this part of the country—that it is the province of the jury, to consider both the facts and the law of the case—that it is for them to say whether the facts charged in the indictment are proved in the course of the trial, and if they find them proved, whether these facts do amount to the crime charged. And that being the case, we hold that we are not deprived of the benefit of any pleas which we may afterwards maintain, by any interlocutor of relevancy now to be pronounced.

I conceive also, that in justice to the panel and in justice to the opposite side of the bar, (who always meet me with liberality, and whom I wish to meet in the same manner), I should at once and openly state the nature of the defence we intend to maintain, and should say something of the history and character of the panel.

The panel, after learning the trade of a weaver, in the county of Perth, went to Glasgow, where he continued a good many years. He acted as assistant foreman in a mercantile house, and during the whole of his engagement gave entire satisfaction to his employer. Seventeen years ago he entered into the Highland corps of volunteers in that city, and soon rose to the rank of serjeant, and continued with the corps till it was disbanded, and the volunteer associations were discontinued. He next went to Kilmarnock, where a great many weavers are occupied in working for the manufacturers of Glasgow; and, at the same time, he again gave his services to the public, by entering into the local militia corps of that district, in which corps he continued down to 1812, when the period of its service expired. And not only was there no complaint against him during all these periods, as a man either troublesome or quarrelsome, but he maintained in Kilmarnock, during the period of nearly eight years during which he lived there, a character remarkable for sober habits, attachment to good order, and to the government of the country; and last harvest, during a riot which occurred about a scarcity of meal, so far was he from taking any part in the riot, that when a house was to be attacked, he put himself forward along with two constables in order to protect the house. He enjoyed the same decent, respectable, and good character, till this charge of sedition was brought against him.

He does not deny that he attended the meeting in December. His means of subsistence, and those of his neighbours about him, had been gradually declining. They had arrived, before the period I speak of, at, I hope, their worst state of distress; for he worked fifteen hours a day for 5s. a-week, although he is not only one of the best workmen, but so expert as to be able to execute the best work in the shortest time. And I will prove, that other workmen who could execute as good work, but who were not so expert and expeditious as my client, were able to obtain only 3s. a-week. The panel admits that in this distress he began to think of the causes which had reduced his neighbours and himself from a condition in which they were prosperous and happy to a state in which they could scarcely gain the means of subsistence; he confesses he came to be of opinion, that the evils were partly owing to the excessive taxation which had been imposed on the country; and he and some others thought it right to call a meeting of the inhabitants of the place where he resided, to consider the propriety of a petition to the legislature on the subject of their distress, its causes, and what appeared to them to be the proper remedies:

They conceived, that to do this was their undoubted right; and it will not be denied on the opposite side of the bar, that such was their right. There is no charge in the indictment that the meeting was illegal. It was a

legal meeting which they were entitled to hold: it was for a legal purpose; there was no harm in going there; and every person was entitled to state the grievances he felt, and in a manner that might induce the meeting to take constitutional measures for what he conceived would bring them relief. The panel did not intend to take any part in the proceedings, nor to open the meeting as he did. But those persons who were to have opened the proceedings, were not equal to the task when the time came, and he was asked to undertake what was refused by the others. He went into a house in the neighbourhood, and hastily threw upon paper some observations which he wished to submit to the meeting. He did address the meeting, but he did not submit to it,—and there were not contained in that paper—what are cited as offensive expressions in the last part of the indictment.

As to the passage about a corrupt administration, which is cited in the indictment, it was in the manuscript, but was not spoken in the field. I admit that the manuscript afterwards went into the hands of the committee of the petitioners, at the request of the committee, in order to be printed in an account of the proceedings, but he had no concern in printing that account.

With regard to the expressions which are charged as seditiously directed against the legislature, we shall satisfy the jury, and shall show your lordships, that giving them a fair construction, they contain nothing improper against any of the orders of the state, against the King, the House of Lords, or House of Commons. In sound construction, the expressions apply only to the administration for the time, and every person at such a meeting is entitled, if he thinks it right, to attack the policy and conduct of ministers. I need not enter into the question, whether there has been mal-administration or not; but every person feeling himself aggrieved is entitled to state his grievances, and more particularly at a meeting convened for the purpose of applying to the legislature for redress. This will not be denied. And what was done in consequence of this meeting, and of the speeches which were made there? Every thing was conducted in a regular and orderly manner; no injury was done to any property or to any person; the only consequence of the meeting was, that three petitions were resolved on, one to the Prince Regent, another to the House of Lords, and the third to the House of Commons; which last petition, when presented to that House, was ordered to be brought up and to lie on the table. This is proof that the petitions contained nothing that was offensive to the Prince Regent, nothing seditious, nothing offensive to the Houses of Parliament. Every thing that resulted was legitimate and proper.

Taking the whole circumstances into consideration, it clearly appears, that the first passage objected to, relates to the measures of ministers; and I will prove even by witnesses

for the crown, that, so far was my client from employing any expressions disrespectful towards the head of the government, that he did quite the reverse, and spoke with the utmost respect of the Prince Regent.

This being the situation of the matter, and my client having done nothing but what he was entitled to do, we shall show that the language he used was no other than what he was completely authorised to use. In numerous petitions to parliament, much stronger language has been used, and found not only to be not seditious, but to be not disrespectful to the House. What was the language held when Parliamentary Reform was first talked of at the Thatched-house-tavern? In the second resolution of that meeting it was said, "This meeting, considering that a general application by the collective body to the Commons House of Parliament cannot be made before the close of the present session, is of opinion, that the sense of the people should be taken at such times as may be convenient this summer, in order to lay their several petitions before parliament early in the next session, when their proposition for a Parliamentary Reformation, *without which neither the liberty of the nation can be preserved, nor the permanence of a wise and virtuous administration can be secured*, may receive that ample and mature discussion which so momentous a question demands." * These are strong terms, and imply, that, without reformation in the representation of the people, the liberty of the subject is in danger; and if there is any doubt as to the meaning of the passage, look to the letter written by Mr. Pitt to Mr. Frost, in which it is said, that Reform "is essentially necessary to the independence of parliament, and the liberty of the people." † Down to this day strong language is always used in petitions on that subject and never objected to, except when the House of Commons is denied to represent the people, or matter is introduced against the House that is not relevant to the object of the petition.

It has been laid down by constitutional lawyers and statesmen, by lord Thurlow, by Mr. Pitt, and Mr. Fox, that where the language is expressive of the grievance, however strong it may be, it is justifiable. I therefore submit, that, as it is competent to put such language into a petition to parliament—as such language has not been held objectionable in the House of Commons, it cannot be considered as seditious, or as tending to bring the legislature into contempt. If such language is lawful in petitions to parliament, then it must be held lawful in the speeches and resolutions made at meetings preparatory to such petitions. For there would be an inconsistency and absurdity in saying, that such language might be lawfully used in a petition, which if used in discussing whether it should be inserted in the petition would be unlawful. If

it should be necessary, we shall make out to the satisfaction of your lordships and the jury, that the language, even as stated in the indictment, does not amount to sedition.

Having stated thus much, I conceive I have opened the nature of the defence we mean to plead, at sufficient length to make the opposite side of the bar aware of the nature of our defence, and I think it unnecessary to detain your lordships any longer.

Lord Justice Clerk.—It is a perfectly fair and distinct statement.

Mr. Jeffrey.—I appear here in behalf of Thomas Baird. I suppose we are all agreed, that it is the right and province of the jury to take into consideration both the facts and the law of the case; first, to find whether the facts libelled are proved; and then to judge of the import of the facts so proved. We have no desire to quash the trial in any preliminary stage of the proceedings; and, notwithstanding some incorrect statements in the libel, as we do not wish to shrink from investigation, we shall not trouble your lordships with any preliminary objections to the relevancy.

I have little farther to state in addition to the written defences. Mr. Baird is a merchant in Kilmarnock, and has always maintained, not only an irreproachable but a respectable character in the estimation of both his superiors and equals. He also has served his country in a military capacity, and held, successively, commissions in different bodies of volunteers. In the last corps to which he was attached, he served down till the dissolution of the volunteer system in 1813, when the allowances which had been given to them were taken away; and his conduct, character, and sentiments, were always considered loyal, respectable, and praiseworthy.

He also had entertained ideas, the wisdom and propriety of which cannot here be made a subject of discussion: But to what he considered as defects in the constitution, he wished to apply none but constitutional remedies. A spectator of the general distress around him, and a participator in it, he believed that the evil was ascribable, at least in part, to a defective representation in the Commons House of Parliament; and he therefore thought it proper to present a respectful petition to the legislature on the subject. He attended the public meeting which assembled for that purpose; but he did not take any part in the discussion, not being gifted with powers of oratory, nor wishing to obtrude himself on the public notice. He did however attend the meeting, and he heard the speeches—which were not so violent as they have been represented.

Some expressions were at the time reprobated by him, as tending to throw an odium on the general cause of Reform; and afterwards, when it was determined that some account of the proceedings should be published, and the orators gave in their speeches to the

* 1 How. Mod. St. Tr. 498, note.

† 1 How. Mod. St. Tr. 494, note.

committee for publication, he repeated his objections against printing several passages which appeared to him to be improper; but he was overruled by a majority of the committee, who wished a full publication of the proceedings. As the funds of the petitioners were low, it occurred to the committee that some small pittance might be collected from the publication, to defray the expenses necessary for the preparation of the petitions. In this way, he consented to the publication, but at the same time protested against publishing any improper expressions; but not having any idea (as such a discovery indeed had not then been made in any quarter), that the expressions, though censurable, were of a nature to infer criminal consequences, he gave no critical attention to the minute contents of the publication, nor considered himself responsible for them. In order to forward the end in view, which was not to excite violence or sedition, but merely to raise money, it was determined that the members of the committee should distribute and sell as many copies of the pamphlet as possible; and my client agreed to sell some of them.

These are the facts of the case. As to the relevancy, much will depend on the interpretation to be given to the words libelled on. We do not think it necessary at present to say any thing farther on that point, as we shall prove that the expressions used were materially different from those libelled in the indictment. When the facts are disclosed in the evidence, we shall have a fitter opportunity for remarking on them.

Lord Advocate.—It is unnecessary for me to say any thing as to the candid statement which has been made on the other side of the bar. I admit that it is not only the right of the jury, but that it is their bounden duty to say upon their oaths, whether the matter charged is sedition or not. In that I concur with my learned friends, and therefore I need say nothing more.

Lord Justice Clerk.—Your lordships have heard what has been said on behalf of the prisoners, and what has been said by the lord advocate. I have to ask your lordships, whether you have any observations to offer on the relevancy of this indictment.

Lord Hermand.—I am of opinion that the indictment is relevant; and I think there can be little doubt on the point with those who hear me. The learned gentleman who opened the defence admitted, that an attack on parliament constitutes sedition; adding, that his client did not apply his expressions to the legislature, but to the ministers of the day. It may be so, but that is not what is stated in this indictment, to which alone I can attend at present. Part of the charge goes very deep. They met on pretence of a dutiful petition. Such pretences are always made. But your lordships will attend to what we find stated: "Let us lay our petitions at the feet of the

throne, where sits our august prince, whose gracious nature will incline his ear to listen to the cries of his people, which he is bound to do by the laws of the country." All this is extremely good; but what follows? "But, should he be so infatuated as to turn a deaf ear to their just petition, he has forfeited their allegiance. Yes, my fellow-townsmen, in such a case, *to hell with our allegiance.*" Is that not sedition? Accompanied with an overt act, would it not be high treason? I have no hesitation in saying it would.

Things may turn out differently on the proof from what is represented in the indictment; and I should rejoice to find it so. But, with regard to the speech and the publication, as here stated, is there not a direct attack on the legislature? Another passage is: "A House of Commons, but the latter is corrupted; it is decayed and worn out; it is not really what it is called; it is not a House of Commons." We are told this is only an attack on the ministers. It is an attack on the House itself. Any petition containing such expressions, I always understood, would be rejected by the House of Commons. "At present we have no representatives; they are only nominal, not real; active only in prosecuting their own designs, and at the same time telling us that they are agreeable to our wishes." Is that not a broad attack on the legislature? I shall be glad if the facts charged are not made out. They clearly amount to sedition as they are stated.

Lord Gillies.—I concur in the opinion which I have now heard, so far as to think the indictment relevant. I have no doubt that it is relevant, and that the ordinary interlocutor must be pronounced. The indictment states, that at a meeting "attended by a great multitude of persons, chiefly of the lower orders," one of the panels delivered a certain speech, which speech was afterwards circulated by the other prisoner.

As to the nature and objects of the meeting, no information is given in the indictment; I must therefore hold it to have been a lawful meeting. But the libel goes on to state, that the panel "wickedly and feloniously delivered a speech containing a number of seditious and inflammatory remarks and assertions, calculated to degrade and bring into contempt the government and legislature, and to withdraw therefrom the confidence and affections of the people, and to fill the realm with trouble and dissension." This is certainly a charge of sedition; and, if the expressions cited in the indictment were delivered for the purpose there stated, they must be regarded as seditious. I need deliver no opinion farther at present, for the facts charged in the indictment, and, still more, the wicked and felonious intentions therein ascribed to them, are denied by the panels. All these matters remain to be the subject of proof; and I should be arrogating to myself the province of the jury and of

your lordship, if I said any thing farther at this period of the trial; for after the proof only can any satisfactory opinion be given on the subject.

Lord Pitmilley.—Soon after the printed copy of this indictment was put into my hands, I considered it with a view to the question of relevancy; and although the counsel for the panels have not disputed the relevancy of the indictment, but reserved to themselves the liberty of making such observations as may appear to them proper after a proof shall have been led, it would have been the province and the duty of this court to stop the trial at this stage if it had appeared to us that the indictment is not relevantly laid.

The defence has been very properly explained by the counsel for the panels; and I shall be happy if they make out that defence, either in exculpation, or in alleviation of the crime charged in this indictment. The only question at present is as to the relevancy of the indictment; and I have no hesitation in saying, that in my opinion, it is relevant; and that, therefore, the ordinary interlocutor should be pronounced.

The major proposition of the indictment charges sedition in general terms. This is an unexceptionable charge, which has never been objected to, that I know of, but in one case, where the question regarding it was argued, and the objection was repelled. I allude to the case of *Sinclair*.* It is known to every lawyer that sedition is a crime recognised by the laws of this country. It is a crime, indeed, the trial and punishment of which must be coeval with government.

It is stated that the one panel made a speech which contains inflammatory remarks and seditious expressions, and that the other panel circulated a pamphlet containing that and other seditious speeches. Paragraphs of it have been read, and I will not consume time with reading or commenting on any of them at present. No person who reads them can doubt, that the general nature of them is to excite commotion, and to prepare the way for resistance and for overturning the government. That this is the general tendency of the facts charged, no person can doubt. It would also be wasting the time of the Court to read the passages of the luminous commentary by Mr. Hume on the crime of sedition, or to refer to the authorities and the precedents which have occurred in this court.

The counsel for the panels are correct in stating, that it is the province of the jury ultimately to determine, not only as to the facts of the utterance and the publication of the expressions mentioned in the libel, but also with regard to the law, whether the expressions are to be held seditious or not. On that point

there can be no doubt; and there never was doubt as to it at any period of the history of this court. The Court, however, in considering of the relevancy, must determine in the first instance whether the expressions complained of appear to them to be seditious, and to amount to the crime of sedition; and on this subject I cannot entertain the shadow of doubt.

Lord Reston.—I have no doubt as to the relevancy of the indictment. We have nothing to do at present with the truth of the statements in it. The only question now is, whether the averments of the public prosecutor are put in proper shape and terms in this charge. The jury will decide not only on the bare facts, but on the legal import of them, and will say whether the panels are guilty or not of the crime of sedition.

I have no doubt of the sufficiency of the averments made by the public prosecutor. He has averred circumstances, which, if proved, amount to sedition. His averments amount to this, that what was said and published was not only calculated to produce pernicious consequences affecting the government and legislature, but must have been meant for seditious purposes. The indictment states, that the purpose of the panels was wicked and felonious. I consider that the speech said to have been delivered by one of the panels is seditious in all its parts, and tends to excite discontent in the country. It was delivered in the open air, before a multitude of the lower orders assembled to hear it. The panel is alleged to have stated that their sufferings were intolerable, and in coarse and calumnious language to have said, "A base oligarchy feed their filthy vermin on our vitals, and rule us as they will." I consider this expression as tending directly to vilify the government, and weaken the affections of the country towards its legislature. In this speech he talks of successful resistance. He speaks of the reformation, and of the resistance made to the English when their progress was stopped at Bannockburn. What were the feelings meant to be excited in the audience? He was attempting to degrade the government, in order to stimulate his hearers to resistance; and, to give them confidence, he mentioned former instances of successful resistance. No doubt he proposes that the petition shall be laid at the foot of the throne; and he pays a compliment to the Prince Regent. But what does he add? "Should he be so infatuated as to turn a deaf ear to their just petition, he has forfeited their allegiance. Yes, my fellow-townsmen, in such a case, to hell with our allegiance." Is there no intimidation—is there no threat intended by such language? It is true the expression "just petition" is employed; but who is to judge whether the petition is just? Were those at the meeting to judge? It was in effect, saying, if our petition is not listened to, we are absolved from our allegiance. If the expressions shall be proved, the language is seditious in a high degree.

* See the debate on the Relevancy of the Indictment in *Sinclair's* case, 2 *How. Mod. St. Tr.* 784.

But this panel is not only accused of expressing himself in this seditious manner while in the heat of addressing his audience, but he is also said to have delivered up the MS. of his speech in order to be printed. If this be proved, then not only did he use seditious language in the heat of his address, for which he might have been in a certain degree excusable, if momentarily not master of himself, but he afterwards did the utmost in his power to circulate this sedition. It was not likely that the speech would be heard of beyond the place where it was delivered, without some effort were used to disseminate it, but he shewed his anxiety to obtain for it a wider circulation.

The indictment is clearly relevant as to M'Laren. It is likewise so as to Baird. He was present at the meeting. I do not say the purpose of the meeting was illegal. Baird became the trumpet of that meeting, and is said to have circulated an account of this very speech, which is charged as having been delivered by M'Laren. If the public prosecutor proves his averments, he makes out that a direct attack was made on the legislature, and in strong terms on the House of Commons. "No nobleman—no clergyman—no naval or military officer—in short, none who held places, or received pensions from government, had any right to sit in that House." And again, "Is it any wonder, my friends, that this country is brought to its present unprecedented state of misery, when the rights of the people have been thus wantonly violated?" And in another place it is said, "we have these twenty-five years been condemned to incessant and unparalleled slavery, by a usurped oligarchy, who pretend to be our guardians and representatives, while, in fact, they are nothing but our inflexible and determined enemies."—"They have robbed us of our money, deprived us of our friends, violated our rights, and abused our privileges."—"At present we have no representatives; they are only nominal, not real; active only in prosecuting their own designs, and at the same time telling us that they are agreeable to our wishes." If this is not a direct attack on a branch of the legislature, I do not know what can be an attack on it.

Our present business is only to judge of the relevancy of the indictment, and then a jury will judge both of the law and the facts of the case. If they think neither of the panels used these expressions, or circulated them, or if they are of opinion that they are not inflammatory and seditious, it is their part, not ours, to find so.

Lord Justice Clerk.—I entirely concur in the opinions which have been delivered as to the province and duty of the jury in a case of this kind. It is not necessary for me to state any thing further at present, than that no doubt can be entertained that this indictment is relevant.

Alexander M'Laren and Thomas Baird: Attend to the interlocutor of the court as to the relevancy of this indictment.

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"The Lord Justice Clerk and lords commissioners of justiciary having considered the criminal indictment, raised and pursued at the instance of his majesty's advocate, for his majesty's interest, against Alexander M'Laren and Thomas Baird, panels, they find the indictment relevant to infer the pains of law; but allow the panels, and each of them, to prove all facts and circumstances that may tend to exculpate them, or either of them, or alleviate their guilt, and remit the panels, with the indictment as found relevant, to the knowledge of an assize.

"D. BOYLE, I. P. D."

The following persons were then named to pass upon the assize of the panels.

James Watson, of Saughton.

John Dodds, farmer at Saughton Mill.

John Drysdale farmer, Clermiston.

David Pringle, of Blegbie.

John Stewart, of Binny.

John Calder, farmer at Drumcross.

John Russel, farmer at Mossie.

William Marshall, jeweller, South Bridge, Edinburgh.

Archibald M'Kinlay, haberdasher in Edinburgh.

John Barter, confectioner there.

James Howden, jeweller there.

William Kennedy, glover there.

William Lindsay, wine-merchant, Leith.

John Gowan, wood-merchant there.

James Stoddart, wine-merchant, Edinburgh.

Lord Justice Clerk.—Are the declarations of the prisoners admitted?

Mr. Clerk.—Yes, my lord.

EVIDENCE FOR THE CROWN.

Andrew Finnie sworn.—Examined by *Mr. Drummond*.

You are a merchant in Kilmarnock?—Yes.

Do you know the Dean Park in the vicinity of Kilmarnock?—I do.

How far is it from Kilmarnock?—About half a mile.

Do you remember that a public meeting was held at the Dean park on the 7th of Dec. last?—I do.

Was there a great number of persons at it?—I think about 4,000.

A great number of the lower orders?—Yes.

Do you remember that speeches were made at that meeting?—Yes.

Who opened the business?—Alexander M'Laren.

Is that the person there?—It is.

He made a speech?—Yes.

What was the speech about, sir?—About the business that the meeting was called for, which was for the purpose of deliberating on the best mode of petitioning for parliamentary reform.

Do you remember any part of his speech, any of the words that he used?—Nothing particular, except one passage near the end.

C

Repeat the passage as near as you remember it?—"We will lay our petitions at the foot of the throne (or let us lay, I do not remember exactly which), where sits our august prince, whose generous nature will incline his ear to hear the cries of his people, which he is bound to do by the constitutional laws of the country; and we are thereby bound to give him our allegiance. But if he should be so insatuated as to turn a deaf ear to the general cries of his people (or voice of his people, I do not know which), to hell with allegiance."

Is that the whole of the passage?—The whole of the passage, as far as I recollect.

Lord Advocate.—I wish to know whether M'Laren in his speech stated that a number of resolutions had been drawn up by the committee, which were about to be read?—Yes, about the close of his speech, after the expression I alluded to, I think.

Mr. Drummond.—Did he recommend any body to be called to the chair of the meeting?—He said the committee unanimously recommended Mr. Johnstone.

And did he propose him to be elected to the chair?—Yes, I understood so.

He was called to the chair?—He was called to the chair.

Did you see Mr. Johnstone in the other room to-day?—I did.

Did you ever see a printed account of M'Laren's speech?—Yes.

Was it in an account of the proceedings of the meeting?—In a pamphlet.

Is that the pamphlet?

[The pamphlet was handed to the witness.]

That is one of them.

The rest are the same?—I understood so.

Did you read M'Laren's speech?—Yes.

Did it appear the same as that delivered at the meeting?—No; there was a difference particularly as to that passage.

Lord Justice Clerk.—You mean the passage in reference to allegiance?—Yes, my lord.

Mr. Drummond.—Will you point out to us particularly what is the difference between that printed passage and what he said?—There is one part which I think is omitted.

What is that?—"And we are thereby bound to give him our allegiance."

Do you observe any other difference?—I think that instead of "to their just petition," he said, "to the general cries or voice of his people."

Lord Justice Clerk.—"Just petition" are the words you see there?—Yes, my lord.

Mr. Drummond.—Any other difference?—The words "he has forfeited that allegiance," were never mentioned that I heard; and nothing that I remember, but "to hell with allegiance."

Mr. Clerk wished to know what the witness had said.

Mr. Drummond.—The witness did not hear the words "he has forfeited that allegiance."

Witness.—That is what I meant to say. "To hell with allegiance," is all that I heard at the meeting.

Had you any charge as to printing that pamphlet?—I was appointed to a charge about the printing, but I never acted to it.

Who had the charge along with you?—Mr. Baird.

And who else?—Mr. Walter Andrew.

A writer?—Yes.

You took no charge though you were appointed to superintend the printing?—I was appointed, but never was at the meeting called for the purpose.

How were you appointed to that charge?—By the committee.

Was Baird a member of the committee?—He was.

Do you know who printed the statement of the proceedings?—It was given in to Mr. Crawford, I understood.

Court.—That will not do.

Mr. Drummond.—Were you ever present at the printing?—I was, in Crawford's shop.

Did you ever get any copies of the printed statement from Crawford?—I did get from Crawford printed copies.

Court.—Did you buy them?—I was to pay for them.

Lord Hermand.—Then you did buy them?—I did not buy them particularly.

Mr. Drummond.—Do you know whether Baird sold any of them?—He did.

Did Baird ever tell you so?—He said he got quit of them; but he did not say he sold them.

Did he say he got quit of them all?—He said so.

Did he ever get any from you?—About four dozen.

They were of those you got from Crawford?—They were.

Did you give him all you had?—No, I had eleven or thereby left.

Had you any conversation afterwards with Baird about those remaining?—I am not certain if I had. I do not recollect at present if I had.

I think you said Baird mentioned he had got quit of all his. Did he make any remark on your not having got quit of yours?—I said I had still eleven or thereby; and he seemed surprised as he had got quit of all his.

Lord Hermand.—What did you understand by getting quit of them?—The committee had liberty to get what they wanted; and copies were given to them when applied for.

Court.—The witness does not understand the question. Was any price taken for them?—I understood they were to be 4d. each; that this was fixed by the committee.

Were they disposed of by sale or by gift?—I do not know whether Baird sold them or not. He was to pay for them.

Lord Advocate.—Did you ever go to Crawford's with Baird to inquire after the publication?—I did.

What did you ask?—We asked if any of the pamphlets were ready.

Which of you asked?—I am not certain.

You both went for that purpose?—Yes.

Andrew Finnie cross-examined by *Mr. Jeffrey* for Thomas Baird.

You have mentioned that you two were both members of the committee for arranging about this meeting?—Yes.

Were there many other members?—From 20 to 30, I think.

These were constituted before the meeting was held?—Part. There were more added afterwards.

Was any notice given to the magistrates about the meeting?—Mr. Baird and I were nominated to call upon the magistrates, to inform them of the meeting.

You went?—I did not. Mr. Baird said, he went.

Did he report that the magistrates had no objections to the meeting?—He did.

There was no interference of the magistrates?—None.

Were you present at the meeting?—Yes.

Was Mr. Baird there?—He was.

Did he speak?—No.

Did you hear him make any remarks expressing satisfaction or dissatisfaction on what was said?—I heard him make a remark about the passage I was talking of in Alexander M'Laren's speech concerning allegiance.

What did he say?—He said it was a pity it had been spoken.

He disapproved of it?—Yes.

You said, you, Mr. Andrew, and Mr. Baird, were appointed to take charge of the printing of an account of the proceedings?—Yes.

Was any motive alleged for the printing?—It was for defraying the expenses attending the meeting.

Was there any discussion at the meeting of the committee about the propriety or impropriety of printing the whole of what had been so stated at the public meeting?—Yes, there was.

Did any body object to the printing at all?—I think two were not for printing at all; Mr. Johnston, and Alexander M'Laren.

Was M'Laren a member of the committee?—Yes.

Did Mr. Baird take any part in that discussion?—I do not remember that he did.

Was there any discussion about the propriety of printing certain parts?—Yes.

Did Mr. Baird take any part in that discussion?—He did.

Was he for printing all the words?—No, he was not.

What words did he object to, or what pas-

sage?—I do not remember any other passage than that about allegiance in M'Laren's speech.

What did he say as to that passage?—That he would be inclined to keep it out altogether.

Did he say any thing else about it?—I do not remember particularly any thing else he said.

Was that proposition of his adopted by the committee or not?—No; it was not.

Did it appear to you, that Mr. Baird approved or not of that passage?—He disapproved of that passage, and wished it to be left out.

Did you understand that all the members of the committee were to take copies of this statement, to forward the sale of it, and to account for the 4d. for each copy?—Yes; the committee were at liberty to get what number they wanted, for the purpose of defraying the expenses.

Did they all get copies?—I do not know who did and who did not.

Mr. Baird keeps a shop?—Yes.

Did all the members of the committee keep shops?—No.

What kind of a shop is Mr. Baird's?—A grocer's shop.

Has there been any other general meeting since this in Dean Park?—None that I know of.

Certain resolutions were adopted which are to be found in the printed statement, and petitions to parliament were, in conformity to them, prepared and forwarded?—Yes.

Was there any disturbance or tumult at Kilmarnock since that date?—I do not recollect of any.

Do you recollect any disturbance recently before that, a riot about meal?—Yes.

Before the public meeting took place, about autumn?—Yes; I do not know the exact time when it was.

Lord Advocate.—You said that Baird disapproved of printing the passage about allegiance: do you remember whether M'Laren said any thing, and what did he state about that passage?—I think he said, that if the committee thought there was any thing wrong, he would rather it were kept out altogether.

That was as to the passage in his own speech?—Yes.

When Mr. Baird objected to printing the passage, did he state his reasons why he thought it an improper passage to be printed?—The reason was not stated there, that I remember; but when he and I were talking of it by ourselves.

And what did he say?—He said to me it was a very indecent expression.

He stated nothing to the committee of his reasons?—Not that I remember.

Andrew Finnie cross-examined by *Mr. Grant* for Alexander M'Laren.

I ask the witness to look at the printed

speech, and find these words, "The fact is, we are ruled by men only solicitous for their own aggrandisement"?—I see them.

Were these words spoken?—I do not remember.

"And they care no further for the great body of the people, than they are subservient to their accursed purposes." Was that spoken? I do not remember. I paid almost no attention to any part of the speech, except that about allegiance.

How did it happen that you remember that passage so particularly, and none of the rest of the speech?—It struck me particularly.

Then you do not mean to pronounce an opinion as to any thing that was uttered by M'Laren, except the passage about allegiance?—No.

Do you remember what passed about the opening of this meeting? who asked M'Laren to open it?—I do not remember who asked him.

Did he volunteer, or was he requested to open the meeting?—He was backward to open the meeting.

And he was asked by the committee?—He was asked by the committee.

When was he asked?—At a meeting of the committee.

Lord Advocate.—How many days before the meeting?—I am not certain.

It was some days?—It was some days, I think.

Mr. Clerk.—Are you sure it was some days before the meeting?—I am certain; for immediately or the night before the meeting, he said he was in doubts whether he would do it or not.

Did you use any particular means to keep the passage about allegiance in your recollection?—It struck me so forcibly at the time, the language was so strong, I kept it in my memory.

You mentioned other passages. What part of the passage do you allude to just now? Did you consider the whole passage strong?—The word *hell* struck me. That was the particular part I thought was wrong. I did not consider any thing wrong in the rest of it at the time.

Did you write down the passage?—No.

Are you quite confident of your recollection of the whole of the passage?—I am quite confident it was very near to what I repeated. Whether the words, "cries," or "voice," were used, as I said before, I am not sure of; but I am confident as to the rest of the passage.

Lord Advocate.—At the meeting, had M'Laren any paper with him?—I saw none.

Did you ever see any paper with his speech on it?—Never.

Did you ever hear him speak of the terms of it after it was printed?—I recollect of him saying repeatedly, that the passage about allegiance was a quotation from Shakespeare which came into his mind.

When did he first say that—Was it at the meeting of the committee?—I do not recollect of his ever saying that at the committee; but I have heard him repeatedly say so.

William Merrie sworn.—Examined by *Mr. Drummond.*

Are you a writer in Kilmarnock?—Yes.

Do you remember being at a public meeting held near Kilmarnock on the 7th December last?—Yes.

Do you remember the speeches made at that meeting?—Part of them.

Who made the first speech?—Alexander M'Laren.

Is that the man behind me?—Yes.

Do you remember any part of his speech?—Very little of it.

Do you remember any words near the conclusion of it?—Yes.

Can you repeat them?—The hindmost part of it was, "hell with," or "for such allegiance."

What allegiance was that he was speaking about?—If I remember right, he was wishing the people to address their august sovereign; and he meant their allegiance to him.

Did he give any reason why this allegiance was to go to hell?

Mr. Clerk.—He has not said that.

Mr. Drummond.—Why did he apply the expression to such allegiance? What did he say?—If I remember right, it was, "if he turned a deaf ear to the voice of his people."

Did he say any thing about petitioning?—Yes, he wished the people to petition their august sovereign.

What more do you say of this speech?—I do not remember more.

Lord Hermand.—He has explained enough I think.

Mr. Drummond.—Do you remember any other part of his speech?—No.

Did he use any words to shew what his meaning was when he spoke of the voice of the people?—Not that I remember of.

Lord Advocate.—You said he wished the people to address their august sovereign; and then you stated he said, "if he turned a deaf ear to the voice of his people." Did he add any thing?—I do not remember whether he added any thing or not.

After he used the words, "if he turned a deaf ear to the voice of his people," did he say any thing or not about "to hell with such allegiance?"—That came afterwards.

Lord Hermand.—Did he mention in what way the voice of the people was to be expressed?—No, he wished the people to petition.

Lord Advocate.—Did you, after this meeting, see a publication called "Account of the Proceedings of the Public Meeting of the burghers and inhabitants of the town of Kilmarnock?"

noek, held on the 7th December 1816, for the purpose of deliberating on the most proper method of remedying the present distresses of the country, with a full report of the speeches on that occasion"?—I never saw it, except one day lying on the table before the sheriff.

William Merrie cross-examined by *Mr. Grant*.

Do you know what was the purpose of the meeting?—It was for the purpose of petitioning the sovereign.

Do you know, if in point of fact, petitions were drawn up and signed by the persons who were at the meeting?—I could not say.

Did you sign any of the petitions yourself?—No.

Did you understand from what passed, that it was the intention of M'Laren to induce the people, and you as one of them, to petition the legislature, or to excite violence and disturbance?

Lord Advocate.—I object to this question.

Lord Justice Clerk.—The understanding or opinion of any witness is not to be listened to in evidence.

Mr. Grant.—What did you collect to be the object of M'Laren's speech?

Lord Advocate.—If this course of examination go on, there can be no objection to my re-examining the witness. I did not finish my examination of him, but on the idea that I could not put such questions.

Mr. Clerk.—We have put a question, and we should not be interrupted. The lord advocate puts in his claim to put such questions. But he must not interrupt us in order to make an examination himself.

Court.—He has no such intention.

Mr. Grant.—I put this other question: In point of fact, did this speech excite the people to commotion or disturbance?—No.

There was none upon that occasion?—None.

Was it the tendency of M'Laren's speech, from what you observed, and from what passed, to create commotion or disturbance, or to induce petitions to be sent to the Prince Regent and the two houses of parliament?—It was to induce the people to petition the Prince Regent and the two houses of parliament.

Did he express himself in any way with regard to the person of the Prince Regent in that speech?—Not that I remember of.

When he advised them to lay their petitions at the foot of the throne, did he say any thing of the august prince?—I do not remember any thing of the throne; but he mentioned his august prince.

In what terms?—In favourable terms.

In terms perfectly legal and becoming a good subject?—Yes.

Hugh Crawford sworn.—Examined by *Mr. Solicitor General*.

Are you a printer at Kilmarnock?—Yes.

Do you remember a meeting held in December last in the neighbourhood of that town?—Yes.

Was a MS. account of the proceedings at that meeting afterwards brought to you to be printed?—Part of it.

Did you attend the meeting?—No.
Look at that?

[Pamphlet handed to the witness.]

That was printed in my office.

Who brought it?—The part I saw was brought by David Andrew, I think.

Was any body in company with him?—I think not.

Court.—Has Andrew any more names than one?—I do not know.

Mr. Solicitor General.—Did you see him in the other room to-day?—I did.

Who attended the press while this MS. was printed?—I did not see, as the printing-office is at a distance from the shop, and I was only occasionally there.

Did Thomas Baird attend the printing?—I think I saw him once or twice; I am certain once.

Are you able to say whether this publication is a true copy of the MS. that was brought to you?—I cannot say.

Who printed it?—Thomas Murray, a man whom I employ.

Have you been paid for the printing?—No.

Who is to pay you?—The persons who employed me.

Who are they?—I look to Mr. David Andrew, Mr. Andrew Finnie, and Mr. Baird.

Lord Advocate.—What was done with the publication after the printing?—Copies were taken from me in quantities: Mr. Baird got a quantity, and Mr. Finnie and others got quantities.

Mr. Solicitor General.—How many copies were printed?—About 400 I think.

How many did Baird get?—I cannot say.

Can you say about what number?—There might be four, five, or six dozen.

Lord Advocate.—Do you know M'Laren?—Within this short time.

Did he ever complain of his speech being printed inaccurately?—No, I never spoke to him in my life, to my knowledge.

Thomas Murray sworn.—Examined by *Mr. Drummond*.

Are you journeyman to Mr. Crawford?—Mr. Crawford is my employer.

[The pamphlet was shown to the witness.]

Was that printed at Mr. Crawford's printing office?—Yes.

By you?—Yes.

Is it a correct copy of the MS. given you for the purpose of being printed?—There were some alterations in the proofs.

Corrections of the press?—Yes.

What alterations?—Typographical errors: and perhaps in some sentences grammatical alterations.

Were there any alterations of the sense?—None that I remember of.

Who gave in the MS.?—The first part I received from Mr. Crawford.

Who gave you the rest?—I received it at different times.

From whom?—It was sometimes given in when I was not in the office, and sometimes when I was in it.

Who gave you any part of it?—Mr. David Andrew.

Did Mr. Webster bring any of it?—Once, I remember.

Who came to superintend the printing, and to inquire after it?—That person.

Any body else?—No.

Mr. Baird?—He was twice or three times at the utmost.

For the purpose of inquiring about the publication?—He was several times in the office.

What did he do when he came?—He came to the office along with Mr. David Andrew to look over the first proof.

Did they make any alterations?—One was proposed by Mr. Baird.

What was it?—I do not know.

Can you point it out in the publication?—No, for I never had it in my hand but now and before the sheriff of Ayr.

Was any alteration made in consequence?—None.

Why was it not made?—It was a grammatical alteration that was proposed, I thought the alteration proposed was wrong, and I had a right to make the pamphlet grammatical.

What became of the MS. from which the publication was printed?—It went as all of them do, it was destroyed; I was not desired to preserve it.

Lord Advocate.—Look at the passage on page 7. “to ——— with allegiance,” was that blank in the MS.?—If I remember rightly, that part of the MS. was erased, written over again, then erased and interlined; and I do not know but I ordered my apprentice to leave the blank, as I could not make it out. To make the sentence join properly, I left it blank.

Did Mr. Baird, when he came and looked over the MS., object to the blank, or state any thing?—He never looked over it.

You said Mr. Baird came with Mr. Andrew and looked over the first proof. Did he make any observation about the blank there left?—That was not in the first proof; the proof I spoke of was the proof of the first pages of the pamphlet.

Thomas Murray cross-examined by Mr. Jeffrey for Thomas Baird.

Were the proof sheets sent to any one to be revised?—They were.

To whom?—To Mr. David Andrew.

Any to Mr. Baird?—Never, to my remembrance.

[Part of the MS. was shown to the witness.]

Mr. *Drummond.*—Did you ever see that before?—I never saw it before; it never came into my hands.

Thomas Murray cross-examined by Mr. Grant for Alexander M'Laren.

Was any part of the MS. pencilled?—I do not remember; the MS. was very imperfect, and was partly well and partly ill written; it was partly in quarto and partly in folio, in different hands.

Do you remember the part that contains the blank, what size of the paper was there?—It was folio. I remember it quite well. There were two sheets of foolscap paper written on without being folded.

Was it of the size of this, folded and written on as this?—

[A sheet of folio paper shown the witness.]

Yes.

James Johnstone sworn.—Examined by Mr. *Solicitor General.*

Do you remember a public meeting at Dean park, near Kilmarnock?—Yes.

Do you know that there was a committee to prepare and adjust the business of that meeting?—I do.

Of whom did it consist?—I really cannot tell; of a number of persons; of myself for one.

Was Mr. M'Laren one?—Yes.

Mr. Baird?—Yes.

Were any resolutions prepared before the public meeting?—Yes.

Were they read to the meeting which took place?—Yes.

You attended that meeting?—I did.

Who first spoke?—Alexander M'Laren.

Was there any meeting of this committee after that public meeting?—Yes, that evening.

For what purpose?—The particular purpose was, to consider whether they should print their resolutions and speeches.

Who attended that meeting? Were the panels there?—I think so.

Was it resolved there to print the speeches and resolutions?—Yes.

The several speakers gave in copies of their speeches?—I believe so, but I did not see them given in.

Did you see any thing at all given in?—Nothing but my own speech.

Were you present when the proofs of the proceedings were revised?—I was not present at the revision of any of them.

[The pamphlet was shown to the witness.]

Is that the publication of the proceedings which took place at Dean-park at the time you mention?—I suppose so.

By whom does it appear to be printed?—
By Hugh Crawford.

Was it resolved at the committee that he should be the printer?—Not particularly.

Do you know the MSS. were sent to him?—
I do not know.

Did you never read the pamphlet?—No.

Not even your own speech?—No; I gave it to Mr. Walter Andrew to revise.

Are these the resolutions that were read to the meeting?—I have glanced at them. I cannot say particularly they are the resolutions, but generally I believe so.

Lord Advocate.—You are acquainted with M'Laren?—Yes.

He was a member of the committee?—
Yes.

You have, of course, had conversations with him about the meeting and the publication?—
Yes, in a general way.

Did you ever hear if Baird or he complained of inaccuracy in the statement given of the proceedings?—Yes; Alexander M'Laren.

What did he say?—That one sentence at the end of his speech in the printed account, and cited in the indictment was not in the original MS. He said it runs in this way: speaking of the petition being presented to the Prince Regent, "he hoped he would lend his gracious ear to it, as he was bound to do by the constitution; but if he did not do so, then to hell with allegiance." I think he said this was not in the original speech.

Did you hear his speech?—Only the sound of it.

Did you hear any of the words of it during the meeting?—I cannot say I did.

What did M'Laren say was the inaccuracy?—He complained of the latter part of the sentence altogether being in it at all, because it was not in the MS.

Did he complain of the word "hell"?

Mr. Clerk.—I object to the question. There is no such word in the publication.

[The witness was ordered to withdraw.]

Lord Advocate.—The drift of the examination I was carrying on at the time was, to bring out of the witness what was the conversation between him and M'Laren—whether M'Laren objected to certain parts of the publication which he is alleged to have done. The witness said he never read that publication. I am entitled to put the question, in order to ascertain the witness's recollection; and particularly, whether M'Laren complained of any word being in the MS. I submit that the question I put is competent, viz. whether M'Laren complained of "hell to allegiance" being in the MS. The thing, I admit, is now irremediable, because my learned friend has instructed the witness by stating that there is no such word in the publication; but I say it was irregular in my learned friend to interrupt me and thus to prepare the witness.

Mr. Clerk.—Nobody is more competent to put regular questions to witnesses than my lord advocate, but I cannot permit him to proceed irregularly. What was the question put? Whether M'Laren complained of hell being in the MS. That was implying that the words were in the printed pamphlet, and nobody is entitled to suggest a false fact to a witness. No fact must be assumed in putting a question to a witness.

Lord Advocate.—I wish the Court to keep in recollection what the question was to which I wished to get an answer—whether or no M'Laren complained of being misrepresented by "hell" being in the printed copy. My friend now admits that the question was not irregular.

Mr. Clerk.—The question is not as it was put originally.

Lord Advocate.—I put it to the Court that such was the question.

Lord Justice Clerk.—I do not see any thing out of form here.

Lord Advocate.—The opposite counsel were out of form in interrupting me, and they have rendered the question useless. If they again interrupt me, let them first desire the witness to be removed.

[Witness brought back.]

In what way did he say he was misrepresented?—I did not say so. I say he complained of the latter part of the sentence being put in, because it was not in the MS.

Then he did not complain of being misrepresented?—Yes, in one word that he did not pronounce the word "their," or "our," which comes in before "allegiance."

You are looking at the printed statement. Did you not say that you had not seen it before?—I did not say I had not seen it; I said I had not read it.

Lord Justice Clerk.—He says M'Laren complained of being misrepresented with respect to a word before "allegiance," and he is entitled to look at the pamphlet.

Witness.—As far as my judgment leads me to take notice, he complained of any thing intervening between the word "to" and "allegiance," because it was not in his original MS. He never intended to say it; it was merely a word of some Play that occurred to his memory, and he let it out.

Mr. Solicitor General.—Did he tell you, then, how the passage should have been printed?—He told me the identical words he used. The last words of the sentence were, "to hell allegiance."

Lord Advocate.—Did he complain of the passage as stated in the indictment?—Yes; he gave the indictment to me to read.

Lord Justice Clerk.—He said the passage

was not correctly given either in the indictment or the printed account?—Exactly.

Lord Advocate.—How long is it since he made this complaint to you?—I think the very day he received the indictment.

James Johnstone cross-examined by *Mr. Jeffrey* for *Thomas Baird*.

You mentioned that both of the panels were members of the committee with you. Was *Mr. Baird* at the public meeting?—Yes.

Did you then, or at any other time, hear him make any remarks upon *M'Laren's* speech?—No.

Did you not hear him at any other time make any remarks?—Yes, I have heard him several times complain, and say it was a pity the last sentence had been put in.

Spoken, or put in?—It was a pity it had been spoken at all.

Were you present at the meeting about the printing?—Yes.

Was any objection made to that passage?—I was against the printing altogether, not that I thought there was any thing wrong in the publication; but judging from my own, I supposed all the speeches were made up in a hurried way, and would not stand the scrutiny of the public eye.

Do you remember *Mr. Baird* making any objections to the publication?—I do not particularly.

Do you know any thing of the reasons stated for or against the printing?—The publication was to defray the expenses incurred at the public meeting.

Was the sale of the publication intrusted to any particular persons?—To the committee in general.

[The MS. of the witness's speech was shown to him.]

Was that written before or after the meeting?—Before.

You officiated as chairman at the meeting?—Yes.

James Johnstone cross-examined by *Mr. Grant* for *Alexander M'Laren*.

You are a muslin agent?—Yes.

For any of the Glasgow houses?—Yes.

From that circumstance, have you an opportunity of being much acquainted with the situation of the manufacturers in *Kilmarnock*?—I think so.

At present now, what may the most active weaver be able to clear in the course of a week?—At present things are rather better than they were some time ago. From a calculation I have made, an active weaver may at present gain about 5s. 6d. a week.

What might he be able to gain a week on an average of the last year?—From 4s. to 4s. 6d.

How many hours work a day was necessary to gain this sum?—At least from 14 to 15 hours.

You have compared this period of distress

with better times. What were then the general wages?—About 12s. a week, from 12s. to 14s.

I need not therefore ask if there was the greatest possible distress at *Kilmarnock*?—There can be no doubt of it.

You talked of the meeting which was held near *Kilmarnock*. What was its object?—Solely to petition the Prince Regent, and both Houses of Parliament, to consider the grievances of the country. It was our opinion, that one great reason of them was the defective state of the representation, more particularly in our part of the country; and therefore we particularly recommended attention to that.

Were any other objects in view besides petitioning, any other means thought of in order to obtain redress of these grievances?—None.

Was any conversation ever held in your presence by *M'Laren* that tended to any other purpose than what is in the petition?—None.

Did you ever hear from him any hint, that induced you to believe he entertained disloyal opinions, or seditious intentions?—Never.

Have you occasion to know whether he was of a peaceable and orderly disposition and habit of life?—I never heard or saw any thing to the contrary.

How long have you been acquainted with him?—These eight years.

Does it consist with your knowledge that he was a member of a volunteer corps at *Glasgow*?—I have heard that he was.

Do you know of his being in the local militia, or *Kilmarnock* volunteer corps?—He was in the rifle corps at *Kilmarnock*.

Was the public meeting conducted in an orderly and peaceable manner?—I considered it so. It was with no other intention I undertook the management, and that any gentleman will see from my speech.

What was the state of the weather?—It was very coarse. There was hail, and wind, and snow.

Perhaps that was the reason you did not hear the speech?—That was the reason; I just heard the sound, but not the words.

It was not weather well calculated for any person hearing a speech distinctly?—It was very bad indeed.

You said you were present at a meeting of the committee, when it was proposed to print the proceedings, and that *M'Laren* was there, and that you objected to the printing. Did any other person object?—*Mr. M'Laren* objected particularly to the printing of his speech.

What passed upon that occasion?—There was a great deal of altercation as to the printing; and it was at last agreed that those who had made speeches should give them to a committee appointed to superintend the printing.

Did *Mr. M'Laren* still object to his speech being printed?—He said, though the rest were printed, he did not see any reason for printing

his, as it was made up in a hurried manner, and that he had no intention that morning of speaking at all.

Were you present at any meeting of the committee previous to the public meeting, for arranging about the public meeting?—Yes, I was at them all, I think.

At a previous meeting were any steps taken as to appointing a person to open the proceedings at the public meeting?—It was discussed; and after a great deal of discussion, M'Laren agreed, that if no other person came forward, he would do it; and he mentioned to me since the meeting, he had no idea he should open the business, as another person had given a kind of promise to do it, and that person not appearing on the field, he went to a public-house and prepared some observations. I saw him the night before the meeting, when he told me he had hopes another person would open it.

Do you know who that other person was?—Yes, M'Laren told me.

Was the name of that other person publicly mentioned?—No, it was not.

Was either of you a member of the committee that superintended the printing?—None of us.

Do you know anything of a disturbance that took place about meal previous to the meeting?—I heard of it.

Were you at Kilmarnock at the time?—I was about two shops from it at the time. I did not consider it a mob or disturbance.

Have you occasion to know how M'Laren conducted himself upon that occasion?—No, I have not.

You said you have known him eight years. Did you ever know him to be connected with any body of men assembled for any seditious or illegal purpose?—Never, so far as I knew him, otherwise I would never have kept company with him.

You are an extensive agent?—There are some much more extensive than I am.

Have you ever heard M'Laren was a member of any society for any purpose?—Of none but this committee.

Court.—Does this committee still continue?—No, the committee does not continue.

Mr. Grant.—Was this committee open for any person to go to?—We never had a meeting which was not open; and there were always some others present besides the members of the committee. Any one was asked to attend.

Were any precautions taken to keep your proceedings secret from the magistrates?—None.

Was it ever hinted or proposed that it would be necessary to keep the proceedings secret from the magistrates?—Never.

In point of fact, were the magistrates made acquainted with the intention of the meeting?—I believe so. I called and told Mr. Baird I would not attend unless the magistrates were made acquainted with the intended meeting.

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He was appointed to tell them. Mr. Baird said he had called on the magistrate, but had not found him, and he said he would go again, and I understood from him he did go again.

Was there, according to your knowledge, any obstruction offered by the magistrates to the meeting?—I saw none.

Do you know whether, in point of fact, petitions, founded on the resolutions adopted at that meeting were prepared to the Prince Regent and the two Houses of Parliament?—They were.

Did you read them over?—I think nearly. I heard them all read.

Does it consist with your knowledge that they were forwarded?—I was told so by Mr. Baird. I read in the public papers that they were presented.

If I were to show you a printed copy of the petition, should you remember it?

Lord Advocate.—Nothing is said in the indictment about the petition.

Mr. Clerk.—Much will be said in defence upon this very fact about which we are examining the witness.

Lord Advocate.—Defences have been given in for the panels, and no notice is taken in them of productions being to be made. Your lordships will take notice of this. I only wish you may keep this in view.

Lord Justice Clerk.—We must receive whatever may go to exculpate the panels.

[The account of the petition in a printed copy of the Journals of the House of Commons was handed to the witness.]

Mr. Grant.—Were these the terms of the petition?—As far as my judgment serves me, that is the substance of the petition.

Have you any doubts whether this is the same petition?—I have none at all. None can suppose my memory is such as to say these are the identical words.

Your answer is quite proper. I have put a cross at the margin. Say whether you recollect particularly that the words there form part of the petition?

Lord Advocate.—I consented to a few questions being put to the witness, but I now object to any farther questions that are not cross.

Mr. Grant.—I am just finishing this part of the examination. I have only to read a passage, and ask the witness whether he remembers it. "When we came to discover those alarming facts, our hearts stood appalled, as if we had trod on a volcano: We looked around for the cause, and we found it in the very corrupt and defective representation of the people in parliament. We found, that the Commons House, whose members ought to be chosen annually by the people—should be the organ of the people's voice—the guardians of their rights and of the public purse—had lost all control over the servants of the Crown, and

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had become subservient to the will of the minister of the day: That the great body of the people are excluded from their elective franchise—that a majority of your honourable House are returned to parliament by proprietors of rotten boroughs, the influence of the Treasury and a few other individuals; and that seats therein are bought and sold like tickets for the Opera."

Were these the words in the petition?—I think these identical words were in the petition which was forwarded to parliament, and ordered to lie on the table, I believe.

You remember being shewn this printed publication. You said M'Laren complained of the latter part of his speech being inserted because it was not in the manuscript?—Yes, I did.

Say what part was not in the manuscript?—I cannot say what were the words he spoke at the meeting. What he said to me was, that he concluded with a line of a play, and it was "to hell allegiance."

Mr. Clerk.—Did he say that any part of the passage before that was not in his manuscript?—He just said the latter part of the sentence was not in the manuscript.

You said you had a conversation with him when he shewed his indictment, and that he complained as you have stated. Had you any other conversation with him on the subject than on that occasion?—Perhaps there might be two or three, but to the same purpose.

Did he attempt to influence you as to what evidence you should give at this trial?—Neither of us considered I should be called on to give evidence. I did not know what he had spoken, nor about the selling of the pamphlets.

Lord Advocate.—We have had a very eloquent petition read. By whom was it composed?—I do not know.

Did any member of the committee compose it?—The committee for superintending the printing were appointed to compose it, namely, Thomas Baird, W. Finnie, W. Andrew, D. Andrew, and W. Webster.

They produced it to you as their own composition?—It was produced and read at the meeting.

Did they say anything that led you to suppose that it was not their own composition?—I do not think they did.

Did they not say from whom they got it?—They did not. There was some amendment made upon it.

Upon your oath can you state that none of them said to you anything about the getting of the petition?—I heard nothing of it.

Did any member of the committee give you to understand they had not drawn up that petition, but got it from another quarter?—It would be ridiculous for a man to speak positively to a thing he does not recollect of.

Hugh Wilson sworn.—Examined by
Mr. Barron.

Were you at a public meeting in Dean-park,

about the beginning of December?—I believe it might be about that time.

Who was the preses of the meeting?—James Johnston.

Who made the first speech?—Alexander M'Laren.

Did you read an account of the speech?—Yes.

Was it correct?—I do not remember.

Did it appear correct or incorrect, generally speaking?—Yes, it appeared correct.

Did you see anything that was incorrect?—I cannot say that I did.

Do you know where it was sold?—At Thomas Baird's.

[Pamphlet was handed to the witness.]

Did you buy this copy in Baird's shop?—Yes, I believe I did; I am certain I did.

Do you see your subscription there?—Yes.

Where did you write it?—In Mr. Brown's.

Who was in the shop when you bought it?—I do not recollect.

Lord Advocate.—Are there any booksellers in Kilmarnock?—Yes.

Hugh Wilson cross-examined by Mr. Grant
for Alexander M'Laren.

What was the object of the meeting?—To consider the propriety of petitioning parliament for a reform.

Had the meeting any other object?—None, that I know of.

Did any person recommend anything else?—Not that I heard.

Did you hear the panel M'Laren speak upon that occasion?—Yes, I was there at the time, I heard part of his speech.

Was it a very stormy day?—Very stormy.

Was there hail?—Yes.

Were many umbrellas up?—A great number.

Was any noise made by the pattering of the hail upon them so as to prevent you from hearing?—Yes.

Was every thing conducted in an orderly and peaceable manner?—Yes, they did.

Did you sign the petitions to the legislature?—Yes.

Do you recollect what the terms of the petitions were?—No.

Are you well acquainted with the panel Alexander M'Laren?—Yes.

How long have you been acquainted with him?—A great many years; five or six, or better.

What character has he possessed as to peaceable demeanour and loyalty?—A good character, as far as I know.

Has he had the reputation of being seditious and troublesome, or loyal and peaceable?—The latter.

Was he ever connected with any society?—I do not know; he was a member of the committee for petitioning for reform.

But with none other?—With no other that I know of.

Do you think you would probably have heard of it if the fact had been so?—I think so.

Have you ever heard him talk of the measures of government?—Yes.

What way did he express himself?—He used to approve of the measures of government.

Did you ever hear any arguments between him and others on politics?—Yes, he took the government side.

Do you know of his having been a member of any military body?—I believe he served in the Local Militia, in the Rifle corps.

Did you look on him as a man of a seditious turn of mind, or as a friend to the government?—As a friend to the government.

Did you ever hear any imputation to the contrary cast on him?—I do not remember ever hearing any.

Do you know any thing about his objecting to his speech being printed?—No.

Lord Advocate.—Do you know who drew the petition?—No.

Did you ever read it?—Yes.

David Bow sworn.—Examined by
Mr. Drummond.

What is Mr. Baird?—He has a grocer's shop.

Were the pamphlets sold at Mr. Baird's shop?—Yes.

Many of them?—Many. I could not say as to the number.

Some dozens?—Yes; some dozens.

Fifty copies?—I believe there might.

What were they sold for?—Fourpence each.

David Bow cross-examined by *Mr. Jeffrey*
for Thomas Baird.

Do you know if they were sold any where else?—Yes.

Lord Advocate.—Where?—Different persons of the committee got them.

Mention who got them?—Mr. Finnie, Mr. Johnstone.

How do you know that?—Because I saw them given away. They were given to be sold by Mr. Baird.

Besides those given to the members of the committee, several dozens were sold in your shop?—Yes.

James Samson, sworn.—Examined by
Mr. Drummond.

[The pamphlet was handed to the witness.]

Have you seen this pamphlet?—Yes.

Have you seen in it the statement of a speech said to have been made by you?—Yes.

Have you read it? Is it a fair account of what you said?—It is near about it.

Did you compose the speech yourself?—No.

Where did you get it?—From Mr. Baird.

Before the meeting?—Yes.

Did you speak or read it?—I read it.

James Samson cross-examined by *Mr. Jeffrey*
for Thomas Baird.

Look at what is written before the beginning of that speech, where it is stated, that a Mr. Burt and a Mr. White could not attend, but had transmitted addresses to be read to the meeting. Yours was given in the name of Mr. Burt, and you understood it was Mr. Burt's speech you read?—Mr. Baird said Mr. Burt had sent it to him.

It was not Mr. Baird's writing, but Mr. Burt's?—Yes.

The following Declarations of the Panels were then read.

Declaration of Alexander M'Laren.

At Kilmarnock, the 26th day of February in the year 1817, in presence of William Eaton, Esq. Sheriff-substitute of Ayrshire, appeared Alexander M'Laren, weaver in Kilmarnock; who being examined, declares, That he is a native of Perthshire, and in April next he has been eight years in Kilmarnock. Declares, That there was a public meeting held at the Dean Park, near Kilmarnock, on the 7th of December last: That that meeting was for the purpose of petitioning Parliament for a reform of grievances. Declares, That previous to that meeting there was a committee of certain individuals in Kilmarnock, for the purpose of bringing about the said meeting: That the declarant attended that committee, and David Ramsay Andrews, writer in Kilmarnock, Thomas Baird and Andrew Finnie, merchants there, also attended that meeting, and the declarant has reason to suppose they were members of it as well as himself. Declares, That the declarant first appeared on the hustings and opened the meeting; and being shewn an "Account of the Proceedings of the Public Meeting of the Burgesses and Inhabitants of the town of Kilmarnock," and wherein is engrossed, on part of the fifth page, sixth, and part of the seventh page, what the declarant said at opening the above meeting. Declares, That the declarant has perused said speech, and it is near what the declarant said on the above occasion, except what is said about the middle of the seventh page about allegiance, which the declarant thinks he did not deliver in the words as expressed in the publication. Declares, That on the morning of the above meeting, the declarant put into writing what he must say at the opening of the meeting: That he afterwards gave his part of the manuscript to those who were appointed by the committee to superintend the printing of the proceedings, that the same might be published along with the rest. Declares, That James Johnstone, muslin agent in the Waterside of

Kilmarnock, was called to the chair, and on that occasion he made a speech, which was much approved of by those present. Declares, That the resolutions, as engrossed in said publication, are the same that were read at the public meeting, and the manuscript was read to the committee, previous to the meeting, by Thomas Baird, merchant in Kilmarnock, one of the members. Declares, That Hugh Crawford, printer in Kilmarnock, was employed to print the proceedings of the meeting, which were afterwards sold at fourpence a-piece, to enable the committee to defray the expenses. Declares, That the declarant attended a meeting of the committee, when those who spoke gave in their manuscripts for printing, and the declarant thinks the foressaid Thomas Baird was present: That a committee was appointed to superintend the printing, and the said Thomas Baird and Andrew Finnie were of that committee. And being shewn the printed report before mentioned, declares, That he heard none of the authors find fault with any thing that is therein contained; and the said publication is docketed and signed by the declarant and Sheriff as relative hereto. Declares, That the words on the sixth page, "The fact is, we are ruled by men only solicitous for their own aggrandizement, and they care no farther for the great body of the people than they are subservient to their accursed purposes," were in the manuscript wrote by the declarant, but were not repeated by him at the public meeting when on the hustings as above. And the foregoing declaration being distinctly read over, he declares that it contains the truth. In witness, &c. &c.

Declaration of Thomas Baird.

At Kilmarnock, the 26th day of February in the year 1817, in presene of William Eaton, Esq. Sheriff-substitute of Ayrshire, appeared Thomas Baird, merchant in Kilmarnock; who being examined, declares, That there was a meeting of several persons in the town of Kilmarnock in the month of November last, for the purpose of taking into consideration whether or not there should be a general meeting for the purpose of petitioning the Prince Regent and both Houses of Parliament for a reform: That the declarant was preses of the first meeting only: That there were several after meetings, some of which the declarant attended, and the 7th of December last was fixed for a general meeting at the Dean Park: That the declarant attended that meeting, and Alexander M'Laren, weaver in Kilmarnock, mounted the hustings, and opened the meeting with a speech: That James Johnstone, muslin agent in Kilmarnock, was called to the chair, and read a speech to the meeting

from a memorandum book: And being shown a manuscript consisting of nineteen pages, declares, That he is pretty certain that it is the same that he read to the meeting, and which the declarant saw some days afterwards in Walter Andrew's office, and which is docketed and signed as relative hereto. Declares, That the proceedings were ordered to be printed, and the declarant was appointed by the committee, along with several others, to superintend the printing: That the declarant assisted in correcting the grammatical errors in the Manuscript, along with the said Walter Andrew, and the declarant assisted a little at the printing-office in correcting the proof copy. And being shown a half-sheet of paper, titled on the back "No. 5. Mr. Burt's letter," declares, That said words are of the declarant's hand-writing, and the said half-sheet of paper was given in by the declarant to the printer, along with the rest of the manuscripts; and said half-sheet of paper is docketed and signed by the declarant and sheriff-substitute as relative hereto. Declares, That the proceedings of said meeting were printed by Hugh Crawford, and a great number of copies were sent to the declarant's shop, and he retailed them at fourpence a-piece; and being shown a copy of the publication, declares, That it is a copy of the proceedings which were published and circulated as above, and is docketed and signed as relative hereto; all which he declares to be true. In witness whereof, &c. &c.

EVIDENCE IN EXCULPATION.

James Samson sworn.—Examined by Mr. Grant.

You remember a public meeting at Kilmarnock last December. Was it for the purpose of petitioning parliament? or what was the object?—To petition parliament.

Were you a member of any committee regarding that meeting?—Yes.

Are you well acquainted with the objects of those who were concerned in that meeting?—I know as to any meetings I was at of the committee, what I heard there.

What was its object then?—Entirely to petition parliament.

Do you know who were proposed to open the business of the meeting by a speech?—Different persons.

Do you remember any of their names?—I could not say I entirely recollect, except him that did it; but I know that others were proposed.

At what time was it proposed that Mr. M'Laren should open the meeting?—About a week before the meeting took place.

Did he accept readily the office of opening the meeting?—He did not.

Did he object to doing it?—Yes.

Did he suggest any one else to do it?—Yes.

Whom?—Mr. Blackwood.

Did he suggest any other person?—He was for imposing it on me.

Did you consent to do it?—No.

What was the last time he urged you?—About an hour before the meeting took place.

Did he state he was prepared or unprepared?—I did not know that he had anything prepared; but he said he was not a fit hand for it.

It was on your refusal that he undertook the office himself?—Yes.

What was the object of the petition? What was it about?—To obtain a reform in parliament.

Was there any conversation as to what was to be done in case the petitions were not assented to?—Yes.

What was to be done?—To petition again.

Did you hear Mr. M'Laren make his speech?—I was present and heard some of it; but I did not hear it distinctly.

From what cause?—One reason was, that I was behind him, and the wind carried the sound of his voice to the other side; and as I knew I had to read a speech myself, I was a little agitated.

From the general import of the speech, did you gather its purpose was, to excite riot and disturbance, or to induce people to come forward to sign this petition?—The latter.

Do you know that petitions were proposed?—Not then. The resolutions were read and approved of, and the petitions were to be according to the spirit of these resolutions.

What steps were taken for preparing the petitions?—I could not say positively about that.

Did you sign any petitions?—Yes.

How many?—Three, I think.

To whom were they addressed?—To the Prince Regent, the House of Lords, and the House of Commons.

Do you know whether they were forwarded?—I believe they were.

Were you ever molested in consequence of having signed any of these petitions?—No.

Did you ever hear of any one being molested?—No.

Have you known Mr. M'Laren a long time?—A considerable time.

In your opinion what was his character as to quietness of demeanor and loyalty?—He was regarded as one of the loyalest men where he lived previous to this charge of sedition.

Have you ever conversed with him on political questions?—Sometimes about the doors; and I have heard him dispute with others, and support the side of administration.

How long ago is it since you heard him express his opinion on such subjects?—More than a year since.

In disputing with others what side did he

take? Did he oppose those that were on the Opposition side?—Yes.

Was he a man given to riotous proceedings, or was he industrious at his business, and quiet in his conduct?—He was industrious at his business, and quiet in his conduct.

Was he ever connected with any society, except this committee?—No, never.

Is he a sober man, or is he given to company and liquor?—Not that I know of; he is a sober man.

Were you present at the committee when there was a talk of printing the proceedings?—Yes.

Did you see, or hear read before the committee, a manuscript purporting to be a speech of Mr. M'Laren?—It was not at that committee I think; it was at a previous one.

There was a subsequent committee?—Yes.

And you heard read over what purported to be a speech of Mr. M'Laren?—Yes.

[The pamphlet was handed to the witness.]

Did you ever read this publication?—Yes.

Do you recollect a passage in the printed speech about allegiance?—I could not say; I think so.

Look at these words. Do you remember hearing the manuscript read? and do you recollect in it the words at the end about allegiance, and so on, which are now in that printed paper?—I could not say they were there.

Can you say they were not there?—They were not there, I think, when he delivered the paper.

Say what was not there?—I think the two or three last lines were not in the manuscript: "Yes, my fellow countrymen, in such a case, to — with our allegiance."

Do you recollect the appearance of the manuscript?—I think it was folded in a narrow strip like a sheet folded over again. It had been folded, I think, before it was written on.

Was the paper folded thus?—[A sheet of foolscap paper shown to the witness folded in octavo.]—Yes, it was folded in that manner.

Was it written bookwise?—Yes, I think so.

I do not ask you who did what I am going to mention, but did any body at that committee, not Mr. M'Laren, make any pencil marking on that paper?—Yes, I think they did. It was not Mr. M'Laren.

Do you know what these marks were?—I did not see the marks.

Did you hear any person read the alteration made by the marks?—Yes.

Was this correction immediately read?—Yes.

Did the person who read that correction read it as a correction he had made with these pencil marks?—I think he did.

What was the purport of that correction?—It is now at the end of this printed speech.

You signed the petition to the House of

Commons: should you know the purport of it if you saw it?—I think I should.

Look at that? [page 82, of the printed votes of the House of Commons.]—I cannot recollect every word or sentence. I think that is the petition. I see sentences that were there.

You recollect the words where you see a X?—I could not say positively.

Do you recollect any of them?—One part about "indemnity for the past" in the sentence—[The passage which Mr. Grant read was pointed out to the witness.]

Do you remember that passage?—I cannot remember it.

James Sanson cross-examined by the
Lord Advocate.

Who were present when these pencil marks were made on the manuscript speech?—I for one.

I suppose so. Who more?—John Kennedy.

That is two. Any more?—Archibald Craig.

That is three. Who else was there?—I do not recollect any.

Do you say there were no more present?—There were others.

Let us hear the names of some more of them?—Mr. Baird was there.

Was M'Laren?—He was there.

Was it by any of those you have named that the pencil marking was made?—Yes.

Which of them?—Mr. Baird.

You have the book lying before you, tell us what was altered?—The latter clauses or clause.

Was any thing put in or left out?—It was put in the manuscript by Mr. Baird.

Did he give his reason for putting it in?—Yes; because the manuscript delivered was not complete according to the way in which the speech was spoken, and therefore Mr. Baird put it in.

Did Mr. M'Laren make any objections to this alteration?—I did not hear.

Mr. Grant.—We would have brought several witnesses in addition to those for the crown, to testify as to the character of the prisoner M'Laren; and it is my duty to inform you of a mistake by which we have been deprived of this opportunity. The letters of exculpation, with instructions to cite witnesses to prove the good character of the prisoner M'Laren, were, by a mistake of the proprietors of the coach at Kilmarnock, forwarded to a person of the same name as that on the address on the parcel in a different town, and not returned till the night of Thursday before the trial, which circumstance we are in condition to prove to your lordships; and we have therefore nothing we can legally produce in addition to the testimony given of their characters. But we have certificates which your lordships may perhaps allow to be read.

Lord Justice Clerk.—Not at present; you

may state the import of them in the address to the jury; but they cannot be put in here in evidence.

Lord Advocate.—If any statement had been made to me of a wish that the trial should have been delayed, I would have willingly conceded the delay.

Mr. Grant.—The thing was not thought of sufficient importance, and the mistake did not appear till last night.

Mr. Clerk.—Your lordships have heard some evidence which shows that the meeting was for the purpose of petitioning the Regent and the two Houses of Parliament. And you have heard that a petition was forwarded to the House of Commons; and reference has been made to a paper, which we state to be a copy of the printed votes of that house.* We wish to produce evidence of this, and of some others of the same description, for the purpose of showing what sort of language is permitted to that House. I need not state how necessary it is for our plea to show you what language it is lawful to use in such cases. In preparing the petitions, and in debates on the subject, such language must of course also be permitted. We can have the productions proved by Mr. Grant.

Lord Advocate.—I think it competent to object to these productions, and to the evidence proposed to be brought as to the accuracy of them.

Mr. Clerk.—Do you admit them?

Lord Advocate.—I have not read them, and I know nothing of them.

Lord Justice Clerk.—The lord advocate only admits that it is the practice to print votes of the House, and that these offered in evidence have the appearance of being copies. It is not usual to call on counsel to be evidence in the trial. As an agent for the prisoners could not be admitted as evidence, I think it would be better to call on some other person than Mr. Grant.† I observe a noble lord present whose testimony might be given.

Lord Gillies.—Mr. Grant can be examined as a haver.

Lord Advocate.—I go so far as to say that I have no reason to doubt the genuineness of the copies.

Mr. Clerk.—I conceive you have been in the use to receive papers from agents, and to examine them as havers of these papers. An agent does not give parole evidence in the

* Even the printed Journals are not, in England, evidence. 8 How. Mod. St. Tr. 685; 1 Phil. Ev. 406.

† Mr. Grant the proposed witness, was one of the counsel for the panel M'Laren; he was at the time of this trial a member of the House of Commons.

cause, but only gives his testimony to the authenticity of a paper in his possession; that is all that Mr. Grant would be asked to do. Mr. Grant can certify, not only that he believes them to be the printed votes of the House of Commons, but also that he received them under cover from the Vote-office, certifying to him that they are the votes of the House of Commons.

Lord Advocate.—The evidence would not be complete; Mr. Grant can only explain how he came by these papers.

Lord Justice Clerk.—In a legal sense what Mr. Grant could certify would not make them evidence. The question of their being actually the votes of the House would remain to be established.

Mr. Clerk.—After they are made public, they are matters of notoriety, which any persons may refer to before your lordships.

Lord Advocate.—I admit my belief of their genuineness.

John Andrews sworn.—Examined by Mr. Jeffrey for Mr. Baird.

Are you chief magistrate of Kilmarnock?—Yes.

Were you in that office in December last?—Yes.

Do you recollect a public meeting in the Dean-park?—I do.

Did you receive any notice or application regarding that meeting?—I think I did; one or two days before it took place.

Who waited upon you?—Mr. Baird met me in the street, and told me of the meeting a few days before.

What did he state to you?—That he was appointed by the committee to wait on me, to inform me the meeting would take place if I would allow it, and that if I would not he would give up the intention of holding it; I said I did not approve of the meeting, but I thought I could not prevent it.

Was it a numerous meeting?—I could not say, I was not there.

Does it consist with your knowledge that the conduct of those at the meeting was orderly or otherwise?—There was nothing of riot or disturbance that I heard of.

No breach of the peace?—None.

Have there been any since?—I know of none; I recollect none.

Was there any kind of disturbance recently before?—In September, I believe.

You are acquainted with Mr. Baird?—Yes, I have been long acquainted with him.

He is in a respectable way of life?—Very respectable.

Is he a quiet and peaceable person, or tumultuous and disorderly?—Always peaceable.

Does it consist with your knowledge that he held a military commission in a volunteer or local militia corps?—I generally understood he was a captain.

Have you seen him acting in that capacity?—I think I have.

Down to what time did he so act?—I could not say.

Walter Andrew sworn.—Examined by Mr. Cockburn.

What are you? A writer?—Yes.

Do you know Mr. Baird?—Yes.

Do you remember the meeting held at Kilmarnock in December last?—Yes.

There was a committee for arranging the business?—Yes.

Were you a member of it?—Yes.

Was Mr. Baird?—Yes.

You have seen him at the committee?—I have.

Do you recollect any discussion after the meeting about printing the speeches delivered there?—Two or three days after the meeting Mr. Baird called on me with the manuscript of a speech which was delivered there. I said I thought indecorous expressions were in it, which ought to be kept out. He urged that objection at a meeting; but the objection was overruled.

What were the precise expressions which you called indecorous or vulgar? Do you remember the expressions?—I could not repeat the words: the passage was the same in the manuscript, as in the printed pamphlet, where I read, "which he is bound to do by the constitutional laws of the country; but should he be so infatuated as to turn a deaf ear to their just petition, he has forfeited that allegiance. Yes! my fellow-townsmen, in such a case to — with allegiance."

What was it you objected to?—What I have read.

And Mr. Baird concurred in that objection, but he was out-voted?—Yes.

Was there any other speech, to the printing of which he objected?—The last in the pamphlet; the speech of Mr. Kennedy.

What was his objection to Kennedy's speech?—He said it was nonsense.

Did he object to any of the others?—To part of Mr. Burt's.

What was the objection to it?—He said it would have been better if it had been clothed in milder language.

From your conversation with him, did you understand him to be the author of that speech?—No. He expressed regret that some of it was not expressed in milder language.

Did you ever hear him express a desire to have every thing done quietly, so as to give offence to nobody?—Yes.

Was there any riot at the meeting?—Not that I heard of.

Did he ever express to you any desire that government should be overawed?—No.

He wished regularity of proceeding?—He said, the only object was to petition constitutionally, so as to give offence to no one.

What was the object of printing the proceedings?—To defray the expenses incurred.

Rev. James Kirkwood sworn.—Examined by Mr. Jeffrey.

Are you acquainted with Mr. Baird?—I have had that pleasure for nearly two years.

Do you know him intimately?—Very intimately. No one more so.

In the course of your acquaintance with Mr. Baird, have you had conversations with him on political subjects?—I have.

Has he expressed his sentiments with apparent sincerity and conviction?—With the greatest I have no doubt.

Did he express an attachment to the constitution as established by law, or a desire to have it altered?—He expressed a desire that the popular part of the constitution should be strengthened and increased, never that the constitution should be overturned.

He wished some reformation of the representation of the House of Commons?—Yes.

Did he ever explain by what means he thought this should be attempted?—I have often heard him say he was anxious that any thing like violence should be avoided, and that none but constitutional measures should be taken.

Does Mr. Baird attend your congregation?—Yes.

Is he a man of peaceable and moral conduct?—To the best of my knowledge he is so.

Did he ever discover any tendency to riotous or disorderly conduct?—I never observed any thing of that kind in him.

He is a peaceable man?—I think so.

Has he any family?—He has several children.

Do you think him capable of intentionally exciting tumult or violence among the people?—I should certainly think he is altogether incapable of designedly doing so.

John Wyllie sworn.—Examined by Mr. Cockburn.

Do you hold any office under government?—I am surveyor of taxes for the third district of Ayrshire.

Do you hold any military commission?—I was in the Volunteers till 1809, and I still hold a commission in the Local Militia.

I need hardly ask you if you are a keen reformer yourself?—I never attended meetings for such purposes.

You are rather ministerially inclined, I presume. Do you know Mr. Baird?—Yes.

What appeared to be his political sentiments?—He seemed to be a friend to the constitution, but wished a reform in the representation.

He had no desire to overturn the constitution?—I have heard him warmly extol the constitution.

Is he a quiet man?—Yes, he has been so ever since I knew him, and that is the greatest part of his life.

Is he respectable in point of situation?—Very much so.

Have you served along with him in any corps?—I was subaltern, and he was a captain in the Ayrshire.

Did his conduct as an officer give satisfaction?—He was a very active officer.

Do you know of a meeting held at Kilmarnock in December last?—I heard of it.

Had you any conversation with Mr. Baird about it?—Yes, once or twice. I heard a gentleman read an account of the proceedings in a company from a Glasgow paper.

Did you ever hear Mr. Baird say any thing about the speeches?—I never heard him make any remarks on them.

Do you know Mr. M'Laren?—Yes.

Was he in that corps you spoke of?—Yes, in my company.

Did he behave well?—As far as I know, sir.

John Brown sworn.—Examined by Mr. Jeffrey.

Are you a writer in Kilmarnock?—Yes.

Have you a partner in business?—Yes, the town-clerk.

Are you acquainted with Mr. Baird?—Very well.

Is he a respectable man?—One of the most so in the town.

Has he a family?—He is a widower, with four or five children.

Do you recollect a meeting in December last for petitioning parliament?—Yes, I do.

Do you know whether a committee met before and after that meeting?—I believe one sat several days before the meeting.

Were you a member of it?—No, nor was I ever at the meeting.

Did Mr. Baird ever communicate to you what was passing?—Scarcely a day passed in which we did not converse on the occurrences of the meeting; and I was in the habit of asking what passed at the committee.

What did he state as the object of the petitioners?—To procure a reform in parliament.

By what means?—By constitutional means.

Did he disavow violence or other means?—Most distinctly.

You know Mr. Baird was at the public meeting: Did he give you any account of what took place there?—Yes, he told me who spoke. When the proceedings were published, I was surprised at seeing a paragraph which I did not look for, and I told him it was a pity it was there. He said he disapproved of it himself, and was against printing it at all, but that a vote was taken on the subject by the committee, and they determined to print it, as they did not wish a garbled statement of the proceedings to go before the public.

Did he make observations on any of the other speeches?—He pointedly objected to M'Laren's speech.

Did he object to any of the others?—He disapproved of one or two, as having language too keen and disrespectful.

Does it consist with your knowledge that he

has held commissions in military corps?—He commanded a company of rifle volunteers for some time.

Did he give satisfaction in his military capacity?—I never heard any complaint against him. I always conceived he behaved like a gentleman.

Was he lately appointed a commissioner of police of the town?—Yes, at last annual election.

From what you know of him was he sincere in his sentiments in favour of constitutional modes of proceeding for obtaining redress of grievances?—There is no question of that. He never approved of any other than constitutional modes of redress. I have known him intimately these eight or ten years.

Was he likely to say or do any thing to produce discontent?—I conceive he would be the last man in the world to be guilty of any thing of the kind.

Are you clerk to the road trustees?—Yes.

Did you understand Mr. Baird objected to these expressions not as being improper in themselves but as likely to lead the persons who uttered them into a scrape?—He did not appear to be apprehensive of any consequences to result from them, but he objected to them as improper expressions.

Are you acquainted with M'Laren?—A little. I have met him on business.

Do you know anything of his character?—I never heard anything against him.

Lord Advocate.—Gentlemen of the jury; you have heard from the indictment that the panels are charged generally in the major proposition with the crime of sedition, a crime well known in the law of Scotland, and with the general description of which you must be already familiar, but with which, at all events, you have had additional means of being made acquainted, from the luminous and satisfactory judgments of their lordships, delivered this morning in the commencement of the trial. I shall not, therefore, in this part of the observations which it is incumbent upon me in discharge of my public duty to address to you, say any thing in further explanation of the law of sedition, which—as a crime calculated to unsettle the order of society, and to introduce tumult, anarchy, and bloodshed into these realms, which, for upwards of a century have enjoyed the highest degree of freedom that ever fell to the lot of any people—is one of the most dangerous which can be committed against the state. Before, however, concluding the remarks with which I shall have to trouble you, it may be necessary for me to draw your attention to the application of the law to the charges preferred against the panels. In the first instance, however, I shall confine myself exclusively to the evidence which has been adduced, in order to establish that the acts at least, alleged in the indictment to have been committed by the prisoners, have been brought home to them.

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You will observe, then, that in the minor proposition of the indictment, the prisoners are charged—M'Laren with having, at a public meeting, on the 7th of last December, held in the neighbourhood of Kilmarnock, and attended principally by the lower orders of the people, used certain seditious and inflammatory language, in a speech which he then delivered—a speech calculated to degrade and bring into contempt the government and legislature, to withdraw therefrom the confidence and affections of the people, and to fill the realm with trouble and dissension. For the precise expressions which he then employed, I shall beg leave to refer you at present to the copies of the indictment which are before you, in which the passages of the speech are detailed at length, and to which I shall hereafter be obliged more particularly to call your attention.

The other panel, Baird, is charged with having published his speech, and with having been accessory to the printing and circulating a seditious tract or statement, purporting to be an "Account of the proceedings of the public meeting of the burgesses and inhabitants of the town of Kilmarnock, held on the 7th of December 1816, for the purpose of deliberating on the most proper method of remedying the present distresses of the country, with a full report of the speeches on that occasion." Then follow particular passages contained in that publication, which are alleged generally to be seditious, tending to inflame the minds of the public against the constitution of the kingdom, and which, it is affirmed, were published by him with the wicked and felonious purpose of exciting sedition against the Government, and of withdrawing the affections of the people from the established order of things in the country. The publication has been duly authenticated, and although I shall afterwards more particularly refer you to some of its most striking passages, the whole, I trust, will receive your full and deliberate consideration.

In the conclusion of the indictment both prisoners are charged with being accessaries to the crimes committed by each. From this you will understand, that if, from a full consideration and investigation of the proof which I have laid before you, you should be of opinion that the prisoner Baird was accessory to making the seditious speech delivered by M'Laren, or that the other panel, M'Laren, was accessory to publishing or circulating the seditious libel, stated more particularly to have been sent into the world by Baird, then you will have to find, supposing you are of opinion that the speech and publication are seditious, that both are guilty art and part of the crime laid in the indictment.

In considering this part of the case as a question of evidence, I do not think that it is necessary for me to go very deeply into the import of the depositions of the witnesses; for I conceive, that while you are called upon to

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discharge a most important duty, in declaring the guilt or innocence of the panels as to the crimes libelled, and which may depend on considerations altogether unconnected with the mere fact of the delivery of the speech by the one, or the publication of the libel by the other, you can have no difficulty in forming an opinion, that both, and each of them, at least, did commit the acts which are charged against them in this indictment. You can have no difficulty in being of opinion, that it is proved that M'Laren did deliver a speech at the meeting, and that the speech did contain the expressions which are cited in this indictment: Neither, in my apprehension, can you doubt, that the publication in question was the work of Baird; that he not only superintended the printing, but assisted in preparing the manuscript for the press; and that he sold and distributed this libel, prepared under his own eye, with the utmost diligence, indefatigable zeal, and persevering activity. In like manner, I, at least, cannot see where a doubt can exist, that it has been legally proved that M'Laren was art and part in the publication, and that he is now bound to answer for that publication which was thus sent forth into the world, be its qualities what they may.

But though that is the impression on my mind, and although I have no doubt that the same has been made upon the minds of all of you, it is, notwithstanding, my duty to go over that evidence, and to endeavour to point your attention to its different parts, as applicable to the charge against the panels separately,—distinguishing, as I have said, the bare facts of the case from the view which I am afterwards to take of the nature and import of the expressions.

In the first place, then, you will attend to the evidence, by which it is proved that the speech in question was actually delivered by the prisoner M'Laren.

Upon this branch of the case, I shall call your attention to the statement given by the prisoner himself in his declaration emitted before the sheriff. But, before doing so, it may be proper for me to state to you distinctly, that in considering this part of the evidence, you must remember, that nothing contained in this piece of evidence can inculcate the other prisoner, but can only affect the party by whom it was emitted. Neither, I will fairly tell you, is it to be taken as conclusive evidence even against him. It is, however, a very strong circumstance of presumption against him, made, as it has been admitted to have been in this case, voluntarily, while the prisoner was sober and in his sound senses, deliberately and seriously. I shall submit to you, therefore, that when the admissions made in this declaration are taken with the parole proof, no doubt can be left upon your mind of the truth of the allegations made in the indictment, in point of fact, regarding the prisoner M'Laren.

In the first place, then, the declaration of

M'Laren states, "that there was a public meeting held at the Dean-park, near Kilmarnock, on the 7th of December last: that that meeting was for the purpose of petitioning parliament for a reform of grievances. Declares, that previous to that meeting there was a committee of certain individuals in Kilmarnock for the purpose of bringing about the said meeting: that the declarant attended that committee, and David Ramsay Andrews, writer in Kilmarnock, Thomas Baird and Andrew Finnie, merchants there, also attended that meeting: and the declarant has reason to suppose that they were members of it as well as himself. Declares, that the declarant first appeared on the hustings, and opened the meeting; and being shewn an 'Account of the proceedings of the public meeting of the burgesses and inhabitants of the town of Kilmarnock,' and wherein is engrossed on part of the fifth page, sixth, and part of the seventh page, what the declarant said at opening the above meeting, declares, that the declarant has perused said speech, and it is *near what the declarant said on the above occasion.*" He next, no doubt, makes an exception as to the inaccuracy of that speech, "except what is said about the middle of the seventh page about allegiance, which the declarant thinks he did not deliver in the words as expressed in the publication."

This, you will observe, is not denying the purport of the passage in the libel, but only the words in which the import was conveyed to the multitude, and we shall see afterwards whether the prisoner be correct in this part of his statement.

He next declares, "that on the morning of the above meeting, *the declarant put into writing what he must say at the opening of the meeting: that he afterwards gave his part of the manuscript to those who were appointed by the committee to superintend the printing of the proceedings, that the same might be published along with the rest.* Declares, that James Johnstone, muslin-agent in the waterside of Kilmarnock was called to the chair, and on that occasion he made a speech, which was much approved of by those present. Declares, *that the resolutions, as engrossed in said publication, are the same that were read at the public meeting, and the manuscript was read to the committee previous to the meeting, by Thomas Baird, merchant in Kilmarnock, one of the members.* Declares, that Hugh Crawford, printer in Kilmarnock, was employed to print the proceedings of the meeting, which were afterwards sold at fourpence a-piece, to enable the committee to defray the expenses. Declares, that the declarant attended a meeting of the committee, when those who spoke gave in their manuscripts for printing; and the declarant thinks the foresaid Thomas Baird was present: That a committee was appointed to superintend the printing, and the said Thomas Baird and Andrew Finnie were of that committee. And being shewn the printed report before mentioned, declares

that he heard none of the authors find fault with any thing that is therein contained; and the said publication is docketed and signed by the declarant and sheriff as relative hereto." And, before concluding, he "declares, that the words on the sixth page, 'the fact is, we are ruled by men only solicitous for their own aggrandizement, and they care no farther for the great body of the people than they are subservient to their accursed purposes,' were in the manuscript wrote by the declarant, but were not repeated by him at the public meeting when on the hustings, as above."

Now, this is the declaration of the panel, and it must, as it will, be supported by other evidence, before, as I have told you, it can have full authority with you as establishing the fact against the prisoner. You will, therefore, observe, that in this declaration he admits, generally, that all the parts of his speech as given in this printed paper, are accurate, with two exceptions.

The first exception is, that there is something inaccurate in the words at the passage regarding allegiance; but he does not state, or allege, in what particular these expressions are inaccurate; neither does he deny that they convey the import of what he had delivered. And, no doubt, there is an inaccuracy in the printed account of this passage; because, you will observe, that one monosyllable, of very great import, is cautiously omitted, which, it is proved by the rest of the evidence, beyond all doubt, the prisoner actually employed. The word "*hell*" is omitted altogether; and while the prisoner refrained from stating what words were incorrectly given, I should be entitled to infer that it consisted in this omission; and, if so, it is of no importance to the general result. Indeed, it is enough for my purpose that he admits generally the accuracy and authenticity of the publication; because I have the means of supporting the strong evidence afforded by this general admission, by other testimony which supplies whatever is wanting in his own declaration.

The second exception which he makes is, that some words, which are mentioned at the end of the declaration, are printed, which he did not deliver at the hustings; but you will observe, that he admits that those words were in the copy of his speech which he gave to be printed, and that he does not allege that he, at any time, ever objected to the publisher, or to the committee, that his speech as delivered was not accurately given, but, on the contrary, that he acquiesced, down to the hour of his emitting this declaration, in its being the true and fair account of the speech he had made on that occasion.

Let us now attend to the parole proof, by which this declaration has been amply confirmed.

Of the two witnesses who were first examined, you have Finnie, who swears that the speech which he heard M'Laren deliver on that occasion contained these words: "We will lay,"

or "let us lay, our petitions at the foot of the throne, where sits our august prince, whose generous nature will incline his ear to hear the cries of his people, which he is bound to do by the constitutional laws of the country; and we are thereby bound to give him our allegiance: But if he should be so infatuated as to turn a deaf ear to the general cries" or "voice of his people, to hell with allegiance." That is the express statement given by a person who himself attended the meeting as a party, who cannot be supposed to be very unfavourable to the prisoners, and whose testimony, indeed, was given in a way that must satisfy your minds he did not intend to press the case more than it would bear against either of them.

Next we have the witness Merrie, who expressly swears (though his memory is not distinct as to the whole passage), that M'Laren made the first speech. He remembers the words "to hell with" or "for such allegiance." He says M'Laren "wished the people to address their august sovereign, and he meant their allegiance to *him*." Then he remembers the words, "if he turned a deaf ear to the voice of his people;" and after that came the words "to hell with allegiance."

Besides the testimonies I have now referred you to, I might, if it were necessary, go over the evidence of many more of the witnesses; but this must be superfluous. You will, however, keep in remembrance the evidence of Samson, who, when called back and examined for the prisoners, deposed, that he attended the meeting of the committee when the speeches were given in for publication by the different persons by whom they had been delivered at the public meeting; that M'Laren was present at that meeting of the committee, and that when he produced his manuscript, there was a correction made on it by Baird, which was read to the meeting; and that the pencils marking made by Baird were those very words I have referred to which are given in this speech, and copied into the indictment which is lying before you. He states, that the words which were added by Baird with the pencil are, "which he is bound to do by the laws of the country: But should he be so, infatuated as to turn a deaf ear to their just petition, he has forfeited their allegiance. Yes, my fellow countrymen, in such a case to hell with our allegiance." These are the words which with a pencil Baird added to M'Laren's speech in his own presence. Now why, I will ask, according to the prisoner's own friend Mr. Samson, were they added? Why, because the committee wished to give a true account of what took place at the meeting, or, to use his own words, "because the manuscript delivered in was not complete according to the way in which the speech was delivered." The committee did not wish to garble the proceedings, but to give a minute, true and accurate account of what happened; and the passage therefore was inserted. All this, you will remember, took place in M'Laren's presence; and did he

object to this addition being made? No; on the contrary, he agreed that the passage should remain there, because it was an accurate account of what he had said. Some feeling of propriety, no doubt, prevented the committee from putting in one word which had been used by M'Laren, and there is a blank accordingly in the printed paper; but the witnesses who were examined fill up the word, and tell you what is wanting. You have M'Laren's admission, therefore, in his declaration, of the general accuracy of the printed account of his speech; you have the parole proof; you have this statement of Samson's; and you have M'Laren's virtual admission in the committee, that these were the expressions he used. It does, therefore, appear to me to be unnecessary to go further in examining evidence on this part of the subject. I think it is clear that these words were used by M'Laren, and that of this it is impossible you should doubt. I may now, then, put the prisoner M'Laren aside altogether, in so far as the mere fact of the speech having been delivered by him is concerned; and it is exclusively to that I am speaking at present.

As to the prisoner Baird, we must also look to the terms of his declaration. He declares, "that the 7th of December last was fixed for a general meeting at the Dean-park: That the declarant attended that meeting, and Alexander M'Laren, weaver in Kilmarnock, mounted the hustings, and opened the meeting with a speech: That James Johnstone, maulin-agent in Kilmarnock, was called to the chair, and read a speech to the meeting from a memorandum-book. And being shewn a manuscript consisting of nineteen pages, declares, That he is pretty certain that it is the same that he read to the meeting, and which the declarant saw some days afterwards in Walter Andrew's office, and which is docqueted and signed as relative hereto. Declares, *That the proceedings were ordered to be printed, and the declarant was appointed by the committee, along with several others, to superintend the printing: That the declarant assisted in correcting the grammatical errors in the manuscript, along with the said Walter Andrew, and the declarant assisted a little at the printing office in correcting the proof-copy: And being shewn a half-sheet of paper, titled on the back, "No. 5, Mr. Burt's letter," declares, That said words are of the declarant's hand-writing, and the said half-sheet of paper was given in by the declarant to the printer, along with the rest of the manuscripts, and said half-sheet of paper is docqueted and signed by the declarant and sheriff-substitute as relative hereto. Declares, That the proceedings of said meeting were printed by Hugh Crawford, and a great number of copies were sent to the declarant's shop, and he retailed them at 4d. a piece."*

The result of this declaration seems to be, that the prisoner admits that he was one of the committee appointed to superintend the publication complained of—that he assisted in correcting the manuscript to fit it for going to the

printing-house—that he did superintend the printing of it, assisting even in correcting the press, and that a great number of copies were sent to his shop which he retailed and distributed.

Accordingly this admission, which, I have said, is, in point of law, a strong circumstance of evidence against the prisoner, is amply confirmed by the depositions of the witnesses, by several of whom it has been proved that he attended the meeting upon the 7th of December, and that he heard the speeches contained in this publication delivered or read by the persons to whom they are attributed. By others it has been proved, that he was one of the committee appointed to superintend the publication; and by one of that committee it is established, that in the matter of publication he took a most active concern, perusing at least the manuscript of some of the speeches as they were given in by the authors or reputed authors; and that such was his vigilance, in providing that none of the precious matter which had come before the public meeting should be lost, that the passage which is chiefly complained of in the first charge against M'Laren, having been omitted in the manuscript, he himself took his pencil, and, for the edification of the public, to whom the pamphlet was addressed, actually wrote it down on the press copy.

In like manner, you have it proved by Murray, Mr. Crawford's journeyman, that Baird attended at the office during the time the publication was printing—that he examined the first proof, and suggested at least one, if not more corrections.

Again, as to the fact of publication, it is proved by the prisoner's shop-boy, and by the witness who bought a copy at his shop, as also by one of the members of the committee appointed to superintend the publication, and who delivered great numbers of the pamphlet for the purpose of being sold and distributed, that Baird was the principal hand by whom this publication, be its merits or demerits what they may, was sent out upon the world.

When you consider this body of evidence, therefore, I cannot entertain a doubt that you must be clear that the fact of the publication by Baird is incontrovertibly established.

Upon this part of the question, therefore, I have only further to remark, that there can be as little ground for doubting, that the prisoner M'Laren, besides being bound to answer for delivering the speech, which in this indictment is charged with having been seditious, must also answer for being an accessory to printing and publishing the pamphlet upon the table. The facts of his having given in the manuscript copy of his own speech for the purpose of being published, and that he was a member of the committee of publication—facts which are proved beyond all contradiction by the witnesses to whom I have already referred, as well as by his own admission—can leave no manner of doubt upon this subject.

I apprehend, therefore, that you must now concur with me in holding it to be established by the proof, 1st, That M'Laren delivered at the public meeting that speech, of which parts are quoted in the indictment; 2ndly, That the publication purporting to be "Account of the proceedings of the public meeting of the Burgeses and Inhabitants of the Town of Kilmarnock, held on the 7th of December 1816" &c. was printed and published by the prisoner Baird, who was active in its sale and distribution; and, 3rdly, That the prisoner M'Laren was also an accessory to the fact of publication.

Upon this part of the case, therefore, which must in fact form the foundation of the opinion which you are to make up, and of the verdict you are to return, there neither can be any ground of difference between my friends on the opposite side of the bar and myself, nor, I am confident, can there be a vestige of doubt in your minds.

But that part of the case which requires your utmost deliberation still remains to be considered. In the commencement of the trial you heard an admission upon my part, that it would be competent for the prisoners, not only to dispute the truth of the facts charged in the indictment, but to plead to you, that supposing those facts were brought home to both of them, the speech and publication in question did not amount to the crime of sedition. To that admission I still most heartily adhere. It has always been in this country, and I trust always will be, the province of the jury, in every question of this description, to find in their verdict, whether there was a criminal intention entertained by the prisoners—whether a crime has been committed or not—and whether that crime amounts to sedition.

In order to enable you, therefore, to make up your opinions upon this subject, had it not been for the deliberate judgments of the Court which you had an opportunity of hearing at the commencement of the trial, it might have been expected of me to enter into some details of the history and of the nature of this offence,—one of the most various and comprehensive, and at the same time one of the most dangerous and flagitious known to the law of Scotland. But as you heard the unanimous opinion of their lordships, that the allegations contained in this indictment, if established against the prisoners, would amount to the crime of sedition, I shall confine myself to such a statement of the subject as is barely requisite for enabling you to follow the conclusions which I find it my duty to draw from the particular passages in this publication which I have been called upon to bring under your consideration.

Sedition, Gentlemen, is a crime by the common law of Scotland; and it has been laid down by our writers, and by the decisions of this court, that it reaches to practices of every description, whether by deed, word, or writing, which are calculated and intended to disturb the tranquillity of the state, by exciting disaf-

fection in the minds of the people against the established government of the country, to produce resistance to its authority, or to lead to its ultimate subversion.

Allow me, however, to guard myself against misconstruction as to the use of the terms, "the established Government," which I have now employed. By those terms, you will not by any means understand that I refer to that which, in ordinary parlance, is commonly so termed, I mean his majesty's ministers. You need not be told that it is competent and lawful for the subjects of this realm to canvass all the measures of his majesty's ministers,—to state that they are contrary to law, and to the interests of the country;—that their proceedings should be interrupted, and the authors of them dismissed from office: in talking, therefore, of raising disaffection to his majesty's government, you will understand that I do not mean exciting disaffection to his majesty's ministers. Far be it from me to contend that this is against law, or that courts of law ought to interfere to punish practices, words, or writings, calculated to produce that effect. But by the established government, I mean the constitution of King, Lords, and Commons, as established at the period of the glorious Revolution of 1688; and, in this sense of the term, I state to you, that any thing which tends to produce public trouble or commotion,—any thing which moves his majesty's subjects to the dislike, subversion, or disturbance of his majesty's government, amounts to the crime of sedition. Any speech or writing that is calculated, and intended to vilify and traduce the sovereign in his capacity of Head of the State, or as a branch of the legislature—any speech or writing calculated and intended to vilify and traduce the House of Peers—any speech or writing calculated and intended to vilify the House of Commons, stating, for instance, that it is not the House of Commons, that it is the mere nominal and pretended representative of the people, and does not represent them,—that it has become corrupt;—writings or speeches inculcating all, or any of those things, fall under the crime of sedition. In like manner, either a speech or a writing exhorting the people to throw off their allegiance, under any particular contingency which may arise from any one branch of the legislature either doing an act, or refusing to do an act, which may, or may not be within its particular competency, will amount to the crime of sedition.

Allow me, also, to observe to you, that in all cases of this description, the time when the particular act complained of is committed, the state of public opinion, and the political relations of the country, internal or external, will often be essential to the constitution of the offence. For instance, to use an illustration that I believe was given by an eminent person, who, in the year 1795, held the situation which my honourable friend near me now holds. Had, in the year 1745, any number of individuals,

however few, with white cockades in their hats, and muskets in their hands, repaired to the Castle-hill, shouting out the name of the Pretender, they would have been guilty of a crime probably not short of the highest that could be committed against the state; but were the same act to be done now, they could be regarded in no other light than as madmen. Various other illustrations of a similar nature might be stated, but I deem it sufficient for me to submit to you generally, as being clear law, that if at any time publications or speeches are complained of as seditious, it will always be of importance to consider the state of the public mind at the period the act alleged to constitute the crime has been committed, in order duly to appreciate their nature and import. With this view, and before concluding, it will be my province to submit to you, in a single sentence, that the state of the country at the time when this publication issued from the press, and when the speech was delivered by M'Laren at the public meeting, must enter deeply into your consideration in forming your verdict upon this indictment.

Upon this subject I have only farther to state that the crime of sedition is one which this court, and the law of this country, has viewed as one of the highest and most flagitious description. Its object is to introduce dissension, troubles, and bloodshed into the kingdom,—to subvert the laws, and to dissolve the bonds of society. It is the duty of government, therefore, to resist and extinguish it in the very outset; and if, in the present instance, I have any thing to regret, it is that this, and perhaps other cases of a similar description, have not been brought sooner before a Jury of the country.

We come now to consider whether the terms of the speech, as delivered at the meeting by M'Laren, or the terms of that speech and of the other speeches in the publication afterwards given to the world by the prisoners, amount to the crime of sedition, according to the description of that offence which I have now had the honour of giving you.

And first, as to the speech. In it you will recollect, that M'Laren stated, "That our sufferings are insupportable is demonstrated to the world; and that they are neither temporary, nor occasioned by a transition from "war to peace," is palpable to all, though all have not the courage to avow it. The fact is, we are ruled by men only solicitous for their own aggrandizement, and they care no further for the great body of the people than they are subservient to their accursed purposes."

In this passage the term rulers, you will observe, is employed; and this, it may be said, applies to his majesty's ministers, and not to the government in the more comprehensive meaning of the phrase; but it does no such thing. There is no limitation, you will remark, introduced by the speaker. Even taking the term generally, and in its extensive sense, undoubtedly it comprehends the whole order of our

Governors, — King, Lords and Commons; but in an after part of the speech, it is explained that this last is actually the sense in which it was employed. The statement therefore is, that the King, Lords and Commons, are corrupt;—that they are solicitous only for their own aggrandizement; that they care no further for the body of the people, than as they are subservient to their accursed purposes. Now, I ask, is not this statement calculated to bring the government into contempt, and to excite disaffection to the established order of things? Does it not tell the people, that they have no interest whatever in the stability of the state; and is it not calculated immediately to lead to disturbance and commotion? It is for you, gentlemen, to answer the question, and it seems to me impossible to doubt that that answer must be in the affirmative.

But in this passage allusion is made to the distresses of the people, and these are made the instrument for giving greater effect to this seditious libel upon the rulers of the country. This, you cannot doubt, enhances the crime of the prisoner, by having employed that under which his hearers were suffering, and which he must have known their rulers could not remove, as an engine for promoting the disaffection he was endeavouring to excite. God knows, that I by no means wish to under-rate the distresses which the persons attending that meeting were labouring under in common with their brethren in different parts of the country. No one who was at that meeting, no one who hears me now, can be more sensible of the great distress which the lower ranks in this country have suffered, and none can more deeply deplore it than I do. While, however, I fully appreciate the extent of those distresses, and applaud the patience with which they have been endured, I can only urge the use which is made of them in the passage I have read, as tending to prove the wicked and malicious intention of the prisoners, who could have had no other object in referring to them than to excite disaffection and sedition.

The prisoner's speech then goes on to state, "If you are convinced of this, my countrymen, I would therefore put the question, Are you degenerate enough to bear it? Shall we, whose forefathers set limits to the all-grasping power of Rome; Shall we, whose forefathers, at the never-to-be-forgotten field of Bannockburn, told the mighty Edward, at the head of the most mighty army ever trode on Britain's soil, 'Hitherto shalt thou come and no further;'—Shall we, I say, whose forefathers defied the efforts of foreign tyranny to enslave our beloved country, meanly permit, in our day, without a murmur, a base Oligarchy to feed their filthy vermin on our vitals, and rule us as they will?"

Upon this passage I shall merely say, that you have heard the only comment which I think it can fairly admit of, put upon it in the judgment of one of their lordships* in the

* Lord Reston; *vide ante*, p. 16.

early part of this trial, You must be satisfied that the object of the orator here is, to recommend resistance, and to encourage it by calling to the recollection of his hearers the popular allusion to the battle of Bannockburn: Accordingly he goes on to state that which must leave all doubt of his intention in this passage out of the question, "Let us lay our petitions at the foot of the Throne, where sits our august Prince, whose gracious nature will incline his ear to listen to the cries of his people, which he is bound to do by the laws of the country. But should he be so infatuated as to turn a deaf ear to their just petition, he has forfeited their allegiance. Yes, my fellow townsmen, in such a case, to hell with our allegiance."

In order fully to understand the seditious import of this passage, it must be taken in connection with that which I previously commented on, and a passage in the resolutions of the meeting, which I am fairly entitled, under all the circumstances of the case, to take as part of M'Laren's speech. In page 26 of the publication, it is stated, "Being therefore impressed with the truth of these resolutions, the meeting resolve to present petitions to his Royal Highness the Prince Regent, and to both Houses of Parliament, requesting his Royal Highness, in particular, to assemble Parliament without delay; to call upon it immediately to adopt such measures as may tend to restore to the people their undoubted right in the representation; to order, in the name of the people, an immediate reduction of the taxes, and the standing army, the abolition of all unmerited pensions, sinecures, grants, and other emoluments, as the surest way of establishing, on a firm and lasting basis, the rights of the Crown, and the privileges of the people: And that, in all time coming, no person who has an office or place of profit under the King, or receives a pension from the Crown, shall be capable of serving as a member of the House of Commons."

Now, the meaning of all this taken together is, that unless the Prince Regent shall order the Parliament to reduce the taxes and the standing army, and to do all the things which are there enumerated, he has forfeited our allegiance, and that the allegiance of the meeting is to be thrown off, and to be sent to hell. But, you are not to be told that the Prince Regent has no such power that—

Mr. Clerk.—That is not the meaning of the passage.

Lord Advocate.—If my interpretation of the passage is wrong, my learned friends will afterwards have the means of correcting me. It would be better if at present they would refrain from interrupting me. In my view, it clearly imports the meaning which I have put upon it. The Prince Regent is to assemble the Parliament, and to call upon it to restore to the people their right of representation; but, in the second place, he is to order all the

other things to be done by the Parliament, which it is not within his competence to do, or he is to order them to be done of his own authority; and if he does not do so, then what is the penalty? No less than the forfeiture of our allegiance, and, as he says, "in that case, to hell with our allegiance." Here, then, Gentlemen, the miserable and distressed people, goaded by their privations and afflictions, who were surrounding the prisoner, were in this speech excited to make demands upon the Sovereign and the Legislature, which, if they were refused, no less a result was to follow than the forfeiture and throwing off of their allegiance.

Now all this I state to you to infer the crime of sedition. It was sedition to alienate the affections of the people from the Government, in the manner which was done in the first part of the speech. It was sedition to tell the meeting, in the second part of it, that if the different reforms there called for were not granted, and if the evils complained of were not removed, their allegiance was forfeited, and to exhort them in such a case to throw it off.

The next point for consideration is the publication itself. But here I am saved repeating the commentary upon one part of that production, the speech of M'Laren; for it must be manifest to you, that if the speech when delivered was seditious, it cannot be less so when reduced into the form of a publication; and every thing, with one exception, which was delivered *viva voce*, is to be found in the printed report. There is a blank before allegiance,—the word "*hell*" is left out. It is your province, however, to fill up that blank. And, after the evidence laid before you this day, you can have no difficulty upon this point. You heard that one of the prisoners, in the presence of the other, wrote out the whole of the passage upon the manuscript when preparing it for the press. The propriety of inserting the passage was afterwards discussed, and doubts were entertained upon the subject by the committee. With the fact of that passage being actually in the hand-writing of Baird, looking him in the face, my learned friend (Mr. Grant), rather strangely in my opinion, pressed upon his witnesses to prove that Baird, in particular, was aware of the indecency of its character; for, under such circumstances, the fact of publication only made his offence the greater. Accordingly, it is proved to you, that the prisoner, whether convinced of its indecency or not, still he, the publisher and corrector of the press, sends it to be printed; and out it comes with the word only left blank, affording, I should think, to your conviction, the fullest and most complete evidence of his guilt.

But let us proceed to consider the other parts of the publication. In page 2, of the indictment there is this passage: "But let us come nearer home: look at the year 1793, when the debt amounted to two hundred and eleven millions, and the annual taxation to

about eighteen millions; when liberty began to rear her drooping head in the country; when associations were formed from one end of the kingdom to another, composed of men eminent for their talents and virtue, to assert their rights; when a neighbouring nation had just thrown off a yoke which was become intolerable,—What did the wise rulers of this country do? Why they declared war, not only against the French nation, but also against the friends of liberty at home.”

Now, I think it is impossible for you to read this passage, without being of opinion that its object was, to impress on the minds of the public an admiration of the proceedings of the French nation (polluted as it was at the time by treason, by blood, and by crime of every description which it ever entered into the mind of man to conceive),—and of those who were termed “the Friends of Liberty at home” in the year 1793, its imitators and admirers:—to hold out that the associations of that period were formed for the purposes of promoting liberty, but which all of you know it was decided by Jurymen sitting in that box where you are now placed,—Jurymen to whose intelligence and vigour the gratitude of this country must be for ever due,—that they were formed for the purpose of exciting disaffection to the government, of introducing turbulence and commotion, and of overturning the Constitution. In short, the object of the publication was to call upon the people to imitate what was so worthy of admiration; and it would be wasting time to persuade you, that if this was the object, one of a more seditious description, when taken in conjunction with the other passages in the publication which I have already read, or am now to read, cannot be conceived.

The publication then proceeds in direct terms to state, “that the House of Commons is not really what it is called,—it is not a *House of Commons*.” And here it is necessary for me to read several passages to you, in order to prove the seditious nature of the publication, and which I shall do without commentary, because I am persuaded, that nothing that I can add could carry the conviction more strongly to your minds of its pernicious and criminal import than the very sentences themselves which I am to bring under your consideration.

In page 23 of the publication you will find it stated, “that the debt, now amounting to nearly 1000 millions, has been contracted in the prosecution of unjust and unnecessary wars, by a corrupt administration, uniformly supported by a House of Commons, which cannot be said, with any justice, to be a fair and equal representation of the country, but which for the most part is composed of men put in by a borough faction, who have usurped the rights of the people, and who, by undue means, have contrived to return a majority of members of that House;—a fact which has not only been admitted on all hands, but which has

been unblushingly attempted to be justified by reason of its avowed frequency and notoriety. The meeting, therefore, have no hesitation in asserting, the debt can never be said to be national, nor the present taxation just, seeing the former has been contracted by men who do not represent the country, and the latter raised without consent of the tax-payer; and it is contrary to the laws and constitution of this and every free country, that no man can be taxed but with his own consent, or with the consent of his agent or representative.”

Again at page 35, there is the following passage: “We have these twenty-five years been condemned to incessant and unparalleled slavery by a usurped oligarchy, who pretend to be our *Guardians* and *Representatives*, while, in fact, they are nothing but our *inflexible and determined enemies*. But happy, happy am I to think, that you have met this day to declare, ‘that you will suffer yourselves no longer to be imposed upon.’” And a little lower down it is stated in express terms: “At present we have *no representatives*; they are only *nominal*, not *real*; active only in prosecuting their own designs, and at the same time telling us that they are agreeable to our wishes.” And again, at page 38, “A set of pensioned seat-buyers in the House of Commons have deprived you of all your rights and privileges. They hold both emoluments and seats in that house, contrary to the express precept of our glorious constitution, which says, ‘that no person holding any emolument can have a seat in the House of Commons.’ Our constitution also allows parliaments only to be of one year’s duration, and that they are to be chosen annually by the people; but they have elected themselves, and by their own assumed and arbitrary authority have made parliaments, first, of three years, then of seven years duration; and with the same lawless power they may make them perpetual. Alarming to relate, they have disregarded our constitution, they have scoffed at her equitable precepts, they have trampled her and her sons under their feet. I would now ask you where is your freedom? Where is your liberty? When we reflect on such usage, it is enough to excite us with ungovernable indignation. They are, according to our glorious constitution, culpable of treason, and justly merit its reward. Will a nation which has been so long famed for its liberty and heroism, suffer itself to be duped any longer by a gang of impostors? No, it will not. The unanimity of our sentiments and exertions, agreeably to the constitution, will once more dispel the cloud which eclipses the resplendent and animating rays of liberty; and will again make her shine forth in this once happy country with unimpeded effulgence.”

In order to remedy all this, universal suffrage and annual parliaments are recommended. Thus the publication states, (page 10.): “The House of Commons, in its original composition, consisted only of commoners, chosen *annually by the universal suffrage of the people*.”

No nobleman, no clergyman, no naval or military officer, in short, none who held *places*, or received *pensions from government*, had any right to sit in that House. This is what the House of Commons was, what it ought to be, and what we wish it to be. This is the wanted change in our form of government,—the Commons House of Parliament restored to its original purity; and this, beyond a doubt, would strike at the root of the greatest part of the evils we groan under at the present day." At page 24. it states, "that the only effectual means that can be adopted to relieve the nation in some measure from its present distresses, are, by restoring the imprescriptible rights of the nation, by a reform in the representation of the people in the House of Commons, and by annual parliaments; and until these take place, the people can entertain no reasonable expectation of ever having their condition improved. But, should these salutary measures be adopted, they are confident that such a Parliament would always act for the good of the nation, and ensure the respect, confidence, and support of the whole body of the people. And it is not without justice that the meeting ascribe to the want of a fair and equal representation of the people in Parliament, all the wars, and their consequences, in which the people has been engaged for half a century past; for if, at the commencement of the first American war, this country had been blessed with a House of Commons chosen by the free suffrage of the tax-payers, would they have acted consistently with the constitution of their own body, to have gone to war with a people of the same origin and language, merely to force taxes upon them without their consent? Or would they have opposed the struggles of the French nation, in endeavouring to obtain that freedom which every Briton cherishes as his birth-right? And of ultimately forcing upon them a hated Dyasty, contrary to the wishes of nine-tenths of the people? The idea is truly preposterous." In page 26, they explain what they mean by the tax-payers. "Considering that of two millions of inhabitants, only 2,700 have a right of voting for Members of Parliament, the remaining 1,997,360, although tax-payers, directly, or indirectly, having no more right of voting, than if they were an importation of Slaves from Africa."

After going through all this long detail of grievances, you will recollect, that unless the reforms called for are granted, and the evils complained of are redressed, the people were told that their allegiance was to be thrown off; and if allegiance be thrown off, rebellion must follow. The result, therefore, of the whole that I have read is, that as the condition of the people never could be improved till universal suffrage and annual parliaments were obtained, so unless all this was granted, resistance must be made, and insurrection against the Government and the laws must be the consequence. But you know that in this country, to resist, unless universal suffrage be

obtained is, in other words, to resist until the British constitution be fundamentally overthrown.

I am not now prepared,—and it would be out of place for me,—to enter at length upon this important subject, on which so many persons have been so grossly deluded. But I cannot avoid pointing out, in a few sentences, that at no one period, either in England or Scotland, did universal suffrage ever prevail; and in Scotland, in particular, from the great subdivision of property, the elective suffrage was never so extended as it actually is at the present moment. It is matter of notoriety, that the history of the British constitution is to be found in the feudal system, and that the constitution of Parliament in particular, while it sprung out of that system, has ever retained features which strongly mark its descent. The immediate vassals of the crown, the great Barons who held of the King "*in capite*," were the first members of Parliament. Originally there were no persons who possessed seats in Parliament as representatives of others; nor were any such introduced into the Legislature until the great estates, to which the duty of attendance in Parliament was incident, having been divided, and that duty had actually become a burthen upon the small proprietors, the foundation of the representative system was thus naturally laid. The first step in the progress which seems to have been made was this, that charters of exemption from Parliament were frequently solicited and obtained, but those were declared to be illegal. Accordingly, it would seem next to have grown by degrees into a law to oblige the great barons only to attend in person, and to permit the lesser to attend by their representatives. This is in truth no matter of conjecture; for by a statute of our Parliament, passed in 1427, the smaller barons were excused from coming to Parliament provided they sent commissioners from the shires.

In like manner, it is proved by the introduction to the laws of Robert III., that those burghs alone which held property *in capite* of the crown, had the right of being represented in Parliament. It is, therefore, a delusion to state, that universal suffrage ever made part of our constitution, or indeed that the right of the elective suffrage was ever broader or more extensive than at present. In fact, I know of no country in which universal suffrage, or any thing like it, ever existed, but one, and that was France in the year 1793. At that period, no doubt, there was an assembly elected by something like universal suffrage, and what was the result? The degradation of the nobility,—the dethronement and murder of the Sovereign,—the overthrow of the church,—and the extinction of religion. Is it those things that these prisoners would recommend? I have already told you, that liberty, as it was practised in France in 1793, has been held up by them as an object of admiration; and if you look to what is stated in the 32d page

of their publication, you will find, that while they hold up to reprobation the higher orders of the State, the revolutionary fate of the Church does not seem to have been altogether out of their contemplation. "Their *reverend hirelings*," say they, "would convince you that you are suffering under the visitation of the Almighty, and therefore that you ought to be submissive to the chastening stroke." This allusion has a direct application to the established church,—its object is not more to dissuade the people from submission under their distresses than to bring the clergy and religion into contempt. It is to tell the people, that while their rulers were corrupt and oppressing them, the ministers of religion were not less base nor more worthy of consideration.

But while the people are thus told in plain language to throw off their allegiance,—while they are urged on to resistance to the executive government,—to overthrow the Legislature, and degrade the ministers of religion, the publication proceeds to hold out the most direct encouragement to rebellion. Look to the passage about the army in page 32. "Your infatuated oppressors may harden themselves against your requests; they may consider themselves as fortified behind a veteran army, which, they may imagine, will be always ready to support them, though in an unjust cause, and by which they may conceive it possible to awe a nation into silence and submission. But let them recollect that the army is still composed of *men* and of *Britons*. And shall they—though they have exerted their valour in the cause of fanaticism,—though they have been led to fight the battles of oppressors, and establish the thrones of tyrants; shall they, in violation of the privileges of freemen,—forgetful of the glory of their country,—forgetful of all that is dear to themselves,—contemptuous of all that they love, and regardless of the fate of posterity,—shall they turn their arms to destroy the constitution of their country? What! after displaying such feats of valour that has immortalised them for ever,—will they stoop so low as to become instrumental in the ruin of their country, for the sake of a faction which has cast a deep shade of disgrace over all the splendour of their victorious achievements? I appeal to the army itself for a reply. I hear it burst like thunder from man to man, from line to line, from camp to camp,—No! Never! Never! We fight not for the destruction, but for the preservation of the rights and privileges of our beloved country!"

You will please here to remember, that you are told, in the outset of the publication, that under the circumstances stated, allegiance has become forfeited, and is to be thrown off; but in the passage I have just read, as if the readers might have the army in view to restrain their patriotic fury, their fears are removed, and they are encouraged with the hope, that the army will not fight against them, but will join and co-operate with their projects of in-

surrection. Can any thing more insidious,—any thing more wicked,—any thing more seditious be conceived or imagined? I will fairly tell you, that, in my opinion, no publication has ever been brought before this court of a more wicked and pernicious tendency, none better calculated to produce turbulence and commotion, than that which I have read to you.

Look to the publication for which Palmer* was tried at the circuit court at Perth in the year 1793, and was transported to Botany Bay; and although these times are not of a description to render it necessary to inflict the same degree of punishment upon the prisoners as was awarded in that case, there is not any thing in it nearly so inflammatory, so seditious, tending so much to excite discontent against the government, or to introduce turbulence and commotion, as there is in the paper which is this day brought under your consideration.

That paper I think it my duty to read to you from the records of the court. It is in these terms:

"Friends and fellow-citizens;—You, who by your loyal and steady conduct, in these days of adversity, have shown that you are worthy of, at least, some small portion of liberty, unto you we address our language and tell our fears.

"In spite of the virulent scandal, or malicious efforts of the people's enemies, we will tell you whole truths; they are of a kind to alarm and arouse you out of your lethargy. That portion of liberty you once enjoyed is fast setting, we fear, in the darkness of despotism and tyranny! Too soon, perhaps, you who were the world's envy, as possessed of some small portion of liberty, will be sunk in the depth of slavery and misery, if you prevent it not by your well-timed efforts.

"Is not every new day adding a new link to our chains? Is not the executive branch daily seizing new, unprecedented, and unwarrantable powers? Has not the House of Commons (your only security from the evils of tyranny and aristocracy) joined the coalition against you? Is the election of its members either fair, free, or frequent? Is not its independence gone, while it is made up of pensions and placemen?

"We have done our duty, and are determined to keep our posts, ever ready to assert our just rights and privileges as men, the chief of which we account the right of universal suffrage in the choice of those who serve in the Commons House of Parliament, and a frequent renewal of such power.

"We are not deterred or disappointed, by the decision of the House of Commons concerning our petition. It is a question we did not expect (though founded on truth and reason) would be supported by superior numbers.—Far from being discouraged, we are more and more convinced that nothing can save this nation from ruin, and give to the people that

* 2 How. Mod. St. Tr. 237.

happiness which they have a right to look for under government, but a reform in the House of Commons, founded upon the eternal basis of justice, fair, free, and equal.

"Fellow-citizens;—The time is now come, when you must either gather round the fabric of liberty to support it, or, to your eternal infamy, let it fall to the ground, to rise no more, hurling along with it every thing that is valuable and dear to an enlightened people.

"You are plunged into a war by a wicked ministry and a compliant parliament, who seem careless and unconcerned for your interest, the end and design of which is almost too horrid to relate, the destruction of a whole people merely because they will be free.

"By it your commerce is sore cramped and almost ruined. Thousands and ten thousands of your fellow-citizens, from being in a state of prosperity, are reduced to a state of poverty, misery, and wretchedness.—A list of bankruptcies, unequalled in any former times, forms a part in the retinue of this Quixotic expedition; your taxes, great and burthen-some as they are, must soon be greatly augmented; your treasure is wasting fast; the blood of your brethren is pouring out, and all this to form chains for a free people, and eventually to rivet them for ever on yourselves.

"To the loss of the invaluable rights and privileges which our father's enjoyed, we impute this barbarous and calamitous war, our ruinous and still-growing taxation, and all the miseries and oppressions which we labour under.

"Fellow-citizens;—The friends of liberty call upon you, by all that is dear and worthy of possessing as men; by your own oppressions; by the miseries and sorrows of your suffering brethren; by all that you dread; by the sweet remembrance of your patriotic ancestors; and by all that your posterity have a right to expect from you,—to join us in our exertions for the preservation of our perishing liberty, and the recovery of our long lost rights."

Gentlemen, this is the publication which was held by a jury in 1793 to be a seditious libel; and I ask you, whether from the beginning to the end of it there is any thing more offensive, any thing more calculated to alienate the minds of his majesty's subjects from the government and constitution of the country, any thing better imagined for leading the people to the use of physical force and to open rebellion, than is to be found in almost every passage of the publication lying on the table? Sure I am, that there is not to be found from the beginning to the end of Palmer's Address, a direct recommendation to the people to throw off their allegiance,—that there is no incitement to actual rebellion—that there is no encouragement held out to the people, that if they rose to enforce the accomplishment of their purposes, the army would join them. But in the pamphlet upon your table, all this is done in the most plain and direct terms. The House of Commons is

said to be corrupt, and not to be the representative of the people: the whole rulers of the country are stated to be corrupt, and while guilty of the most gross oppressions on the people, caring for nothing but their own base, sordid, and tyrannical purposes. The clergy are said to be hirelings, falsely deluding the people with the notion of their distresses originating with Providence; and while the people are called upon to throw their allegiance to hell, they are encouraged with the certain hope of the support of a brave and victorious army.

It seems impossible in my mind, therefore, to doubt, that if the publication in Palmer's case was seditious, *that* now upon the table can be otherwise; that if the one merited punishment, the other can be innocent. On the contrary, I will tell you fairly, in my view of the subject, the present is the worst of the two.

It is now proper that I should tell you, that the same course of defence which has been pursued to-day, was followed in the case I have just been speaking of. In Palmer's case it was said—and we were told to-day that it would be proved—that language similar to that used in this publication had been employed in petitions to the House of Commons, without censure or animadversion; that language not less strong was employed by Mr. Pitt, and by the duke of Richmond, and various other statesmen; and the inference which was drawn in the year 1793, and which, I presume, will be drawn to-day, is, that it was legal for Mr. Palmer in his case, and for the prisoners in theirs, to employ the language which those statesmen have made use of. But my learned friend (Mr. Clerk), who was also of counsel in the case of Palmer, was told then, and I beg leave to repeat it to you now, that the question before the jury and the court was not how often the crime of sedition had been committed, or how often it had been committed with impunity: it was not whether petitions containing seditious matter had been presented to parliament, without the authors being punished: it was not whether parliament had allowed seditious words to be used in its own presence without animadversion; and, last of all, the question was not whether the law officers of the Crown had allowed their duties to sleep, and passed over sedition without bringing prosecutions: but the question simply was then, as it is now, whether the crime attributed to the prisoners at the bar amounted in law to sedition, and whether, if it did, they were guilty of having committed it. If it were proved, that five thousand petitions containing language equally strong as that found in this publication, had been received by parliament, or that the House of Commons had permitted language ten times stronger to be used in their own presence, that can never establish that the prisoners have not been guilty of the crime of sedition charged in this indictment. The House of Commons

has no power of making or declaring law, or of legalizing that which is contrary to law. It is but one branch of the legislature, and if it permits language to be used reflecting on itself, on the Crown, or on the House of Lords, which every lawyer out of it holds to be seditious, which courts of law have found to be seditious, that is no reason why the same language, when employed out of doors with a view to corrupt the minds of the king's subjects, and to excite disaffection and commotion, shall not be repressed with the punishment of sedition.

In the course of the statement with which it has been my duty to trouble you, and which I have put into as plain language as I could employ, I had occasion to mention that in all cases of sedition the state of the times when the act complained of has been committed is to be maturely viewed and considered; that what may be innocently done at one period may be highly criminal at another; and that under one state of the country, language may be used, or a writing published, with impunity, which, under another, would render the author amenable to the arm of the law. Keeping this in your minds, it is, I apprehend, impossible for you to forget the period when the speech in question was made, and the libel before you was published. It has been proved, and I freely admit, that at the time when all this took place the distresses of the country were not only great, but that the misery of the lower classes of the people had reached to an extent seldom experienced in these realms. Those calamities, overwhelming as they were of themselves, were, however, aggravated by this, that at the period in question they were converted, as all of you must recollect, into an engine for exciting discontent throughout the great body of the manufacturing population, who had then been thrown altogether out of employment. The most unprecedented exertions were then employed, by the circulation of inflammatory and seditious tracts, to excite the minds of the people against the settled order of things in the country, while, with a malignity before utterly unknown among us, and having a precedent only in the means that were employed for preparing the people of France for the direful event of the Revolution, a simultaneous activity was employed in the dissemination of immoral, irreligious and indecent works, to subvert the religious principles and habits of the people. No doubt public conventions, as in 1793, were not held, because all things which had then attracted the eyes of the police and the administrators of the laws, and were repressed by the judgments of this court, were carefully avoided. But a system no less dangerous had then been adopted in their stead. That system was, to keep the whole population of the country in a state of ferment, by convoking meeting after meeting in the different manufacturing and populous districts, under the pretence of petitioning parliament against abuses. At these meetings, by the use of in-

flammatory language of one description or another, the minds of the labouring classes had got into a state so unsettled, as to have become prepared for violence of any kind, to which their leaders might direct them. In some quarters the effects of this system had become not less tremendous than those of its predecessor in 1793. In others, its consequences were even worse. We know the effects in Glasgow. You have lately heard the fruits of it in Manchester.

This situation of public affairs, which is matter of notoriety, must enter deeply into your consideration in weighing the views and intentions of the prisoners in committing those acts which I have charged against them as inferring the crime of sedition. But, indeed, of the malignity of their intentions I think you can have no doubt. It is impossible for me, or for you, to look into the minds of men, and to discover what is the purpose at the bottom of their hearts. That can only be gathered from their actions. Now, if you consider the time and the situation of the country when this speech was delivered, and this pamphlet was published; and if you weigh the terms of that speech, and the various passages of that work, the whole of which will be before you, and which I trust you will seriously consider, it seems to me impossible that you should hesitate in forming a decided and clear opinion that the purpose of the prisoners was to render the people disaffected to the government, and to excite them to acts of commotion and rebellion. If such is your opinion, it is your duty to find the prisoners guilty.

No doubt they have been represented as persons of good character. Be it so. With their character in general I have nothing to do, and leave them every advantage they may have upon this branch of the evidence. To myself it appears, that what has been proved of their characters, however good in other respects, is against them in this case. In that point of view, I should state the evidence respecting their characters to you, were I to dwell upon it, which, however, I shall refrain from doing. Indeed I shall notice it no further, than merely to mention, as matter of curiosity, that evidence of the same sort was brought forward and insisted upon in the trials of 1794 and 1795. In fact, the defence in the present case seems modelled upon those cases of a similar description that have gone before it, and will, I trust, meet with the same fate.

Having thus detained you at so great length, I shall leave the case to you, perfectly satisfied with having done my duty in bringing it before you. It appeared to me, after a full consideration, to be a case which could not be passed over, as it was necessary to put limits to the circulation of the dangerous and seditious publications disseminating at present in every quarter of the country. It is for you to say upon the evidence, whether my opinion has been correct or not. I am satisfied myself that my opinion is right, and that the expres-

sions charged in the indictment are seditious ; and I have had to-day the satisfaction to hear that the court thinks so likewise. You will afterwards learn their lordships' opinion upon the evidence, as you have now heard mine. That I have thought it my duty to give you plainly and without varnish. But clear though I be on the whole case, I shall be satisfied with whatever verdict you may give, and I can have no doubt the country will be so likewise.

Mr. Clerk.—Gentlemen of the jury, in the long and able argument which you have just heard, the lord advocate has attempted to convince you that both of the prisoners at the bar have been guilty of the crimes laid to their charge. I attend you for one of them only, Mr. M'Laren, and shall leave the defence of the other, Mr. Baird, to his own counsel, Mr. Jeffrey, who is able to do the most ample justice to his client.

Mr. M'Laren is accused of having made a seditious harangue to the people assembled at a numerous meeting held in a field near Kilmarnock, and of having afterwards caused his speech to be printed, along with other speeches of a like tendency, as a pamphlet, which was sold and distributed in that neighbourhood.

That Mr. M'Laren was present, and spoke a few sentences at the public meeting already mentioned, is certainly true ; but I hope to satisfy you, that considering the occasion and circumstances under which it was delivered, the speech (if speech it might be called) contained nothing seditious or otherwise criminal. As to the publication of the pamphlet, Mr. M'Laren had no concern with it, and knows nothing of it. There is no evidence that he assisted in the printing or publication even of that speech which is said to have been spoken by himself ; and certainly there is no pretence for saying that he took a concern in the publication, sale, or distribution of the pamphlet. I hope, therefore, that I may disencumber myself of this branch of the accusation, as not affecting Mr. M'Laren at all, and leave it, in so far as it may be thought to affect the other panel, to the consideration of Mr. Jeffrey, who will address you for him.

As to the criminality of the speech at the public meeting, much eloquence has been employed, and some points, both in fact and in law, have been strained to the utmost against the panel, in declamatory comments on the wickedness of his supposed intention to blow up the flames of sedition in the multitude, as well as on the supposed illegal and dangerous tendency of his words, as being utterly subversive of the British constitution and of all good government. But in making these violent and uncharitable strictures, it was forgotten that a public meeting having been called for lawful purposes, the occasion rendered it necessary that the panel (who had been appointed to open the business) should make some remarks on the subject of public grievances. This is his defence. In addressing the people, he had

no intention to excite them to sedition or rebellion, to any species of violence, or to any unlawful act. They had met with the fair and legal purpose of petitioning the different branches of the legislature for relief against the grievances of which they complained ; and in speaking of those grievances, the panel did nothing more than assist in the previous deliberations necessary to ascertain the views and wishes of the people assembled, as to the nature of the applications that ought to be made. This defence, so important for the panel, was opened at the beginning of the trial ; but so far from attempting to refute it, the lord advocate did not, in the course of his very long argument, so much as allude to it : and you will see that the indictment, unfairly suppressing the object and purposes of the lawful meeting at which the panel made his speech, represents it, as well as the other speeches there made, as seditious and inflammatory harangues, uttered without the pretence of any fair or legal purpose. These circumstances are not a little extraordinary, if the public prosecutor really had hopes of being successful in his charge. With such hopes he should have argued the case as it stands upon the evidence : he should have attempted to answer the defence on the fact, or on the law, or on both ; whereas, by taking no notice of a defence unquestionably relevant, he either held it to be unanswerable, or intended to rely upon a doctrine (which can never be admitted, and which, indeed, the lord advocate himself did not directly maintain), that occasion and circumstances can make no difference as to the criminality of words—that the same words must, if they are seditious on any occasion, be seditious on all occasions, without the least regard to the purpose or intent of the speaker. But against such an absurdity it is unnecessary to reason. Every one must allow that the same words may be highly criminal, or altogether innocent, nay, absolutely required by duty, according to the different situations in which they may be uttered ; and on this ground I maintain, that even if the words of the panel could not have been spoken without criminality in other situations, they were justifiable as they were spoken to men assembled in deliberation about lawful and dutiful petitions, representing their grievances or complaints to the different branches of the legislature. Nor does it appear of any importance that warm or intemperate expressions, not sufficiently respectful to their superiors, occasionally fell, in the course of their deliberations, from people in the lowest ranks of life, unable to express themselves with that decency which is required from men in higher situations, if it be certain, which it is, that they looked forward to no other result from their meeting, than the exercise of their unquestionable right to petition, quietly and peaceably, without disorder or disturbance.

The right of petitioning has belonged to the subjects of this country, and even to the

meanest of the people, from ancient times. Since the Revolution it has never been questioned; and immediately before that glorious event, it was attacked only to enable a tyrannical government to subvert the public liberty. But the attack was repelled even in the worst of times; and the first act of the government of King William and Queen Mary was to confirm the right of petitioning, as a franchise of which the people could not be deprived. It has ever since been considered as a right unalterably fixed by the fundamental laws of the state; and, accordingly, though the exercise of it is supposed to be sometimes unpleasant to the government, yet no administration, and neither House of Parliament, has hitherto thought proper even to discourage the people in the exercise of their right of petitioning. How many hundreds, or rather thousands, of petitions have been presented to the different branches of the legislature within these few years, representing as grievances things which are not acknowledged to be such! and yet the petitions, as coming from the people in the exercise of their right, have been graciously received by those to whom they were addressed. And so important is the right of petitioning, that every other right in the people has been supposed to depend upon it, inasmuch as the people, if deprived of that right, would be in danger of losing the protection necessary to defend them in their other rights.

It is obvious that a fair communication from the people of their grievances and discontents to the legislature, which has the power, and whose duty it is to protect them, cannot be seditious, if they have a right to make such communication. If the people should petition parliament without having the right by law to do so, these petitions might be, and in almost every case would be seditious and dangerous, in raising or increasing discontents and disturbances; because every complaint of a public grievance has a tendency to create a public discontent, and this is illegal and seditious in every case where the law does not allow it. For the same reason, any violent complaint of public grievances may be seditious or illegal, where it is not addressed to persons having legal authority to take it into consideration and give relief. But it would be a solecism to say, that a petition to the King or to either House of Parliament, stating grievances, and praying for redress is seditious, because, 1st, it is allowed by law; 2dly, the persons addressed have an authority to take the complaint into consideration and give relief. Petitioning is indeed considered as a means of removing discontents and preventing disturbances, not as a means of raising them; and this may be true in some cases, though it is not always so, and we have frequently seen a ferment of discontent much increased by numerous meetings of the people, called for the purpose of petitioning. But still the legal right of petitioning is unquestionable; and it must be supposed that this right, though it

cannot be used without expressing discontent, and thereby communicating it among the people, and possibly raising it, where it had previously no existence, may be legally (and without any crime, or the fear of criminal prosecutions) used in every case whatever, even though the use of it should in some respects have a bad tendency; the utility, and even necessity of presenting the right, counterbalancing the mischiefs which may be occasioned by the seditious or discontented spirit which may be raised by it.

But it must be plain, that if the people have a right to state the grievances in petitions for redress of grievances to the different branches of the legislature, it follows as a necessary consequence that they have a right to state these grievances in the plainest language, and even in what is commonly considered to be strong or coarse language in the description of public abuses, if they do not in their petitions violate that respect that is due to the legislature: under that restriction, they may assert in their petitions that there are the grossest abuses, even in the legislature itself. And you need not be told, that even petitions of that kind are occasionally sent from all quarters of the country, when discontents prevail among the people. A stranger to the peculiarities of the British Government might think it odd that petitions of this class, containing inferences of a nature apparently so irreverent, not only indicating an extreme degree of discontent in the petitioners, but directly tending to raise and disseminate the same kind of discontent through the whole of the kingdom, should be tolerated, especially where it is plainly the opinion, not only of the different branches of the legislature, but also the opinion of the more sensible part of the community, that the petitions are very ill-founded in their representations of grievances, and demand, by way of redress, new public measures or arrangements, which would not only be useless, but dangerous and even calamitous. Such considerations, however, have no influence, or very little influence, in the question, whether the people have the right to present their petitions, and whether, when offered, the petitions ought to be received. On the contrary, it has long been held by the legislature, that, as the people have the right to petition for redress of grievances, so they have the right to state what they consider to be their grievances, whether they are really grievances that ought to be redressed or not. The general rule is, that however unreasonable, or unfit to be granted the prayers of the people in their petitions may be, it is not unfit to receive the petitions, and the people have a right to present them, a right that is unalienable.

But further, if the right of petitioning belongs to the people, they must of necessity have the right of deliberation upon the subject of their petitions, to consult with each other at public meetings, to be advised by those

who are able to advise them, or think themselves able, upon the various points which may occur in considering what are grievances, and what are not; and if there are grievances, what are the remedies that ought to be proposed or prayed for in their petitions. With regard to the important claims which may be made in petitions to the legislature, every man necessarily must have a right to meet with his fellows, either in small or in great numbers, and to discuss the matter with them. One man may think that annual parliaments are necessary; another that they would be hurtful or impracticable. On this trial, it is not necessary for us to consider whether annual parliaments and universal suffrage are good or bad; and, on this occasion, I have nothing to do with these questions. But I say that it is not unlawful to petition for either. And generally, whatever the grievance, or fancied grievance is, it may lawfully be the subject of a petition to the legislature; and for the same reason it may lawfully be the subject of deliberation and discussion, even in public meetings held for the purpose of petitioning. You will observe, that there can be no limits to this right of petitioning, and previously deliberating; for when it is limited the right is gone. The right is to present unreasonable as well as reasonable petitions. Or if unreasonable petitioning were unlawful, the legislature alone is the judge of what is reasonable or unreasonable in petitions. If the right of petitioning could be restrained by the courts of law, there would be an end of the right of petitioning,—a fundamental law of this monarchy,—a law, the palladium of our other rights.

On the occasion of which we have heard so much, when the people in and about Kilmarnock met to consider whether they should send addresses to the legislature on the subject of their grievances, various speeches were made, and we are told by the prosecutor, that these speeches, and in particular the speech of M'Laren, were seditious. In regard to the question, whether or not his speech was seditious, he pleads that the right of petitioning necessarily implies the right of previous discussion. If this be true, apply it to the case before you. At such a meeting a speech may possibly be seditious, where it appears either that the meeting was called, not for its professed object of petitioning Parliament, but merely to afford opportunities to make seditious speeches;—or that though the meeting *bona fide* assembled for petitioning, the speech went beyond its proper bounds, and was seditious in statements not justified by the occasion. As to the first of these cases, there is not even a pretence for denying that the meeting in question was *bona fide* called for the purpose of framing petitions to Parliament. I refer to all the evidence which you have heard. It was a meeting collected for that purpose, and for no other, nor was any further purpose in view.

The argument of the public prosecutor, and the evidence adduced, will apply only to the second case supposed, that the speakers at a meeting *bona fide* assembled for petitioning, had gone beyond their bounds, and deviated into sedition. But has this been made out against Mr. M'Laren? His short speech, though coarse, was suitable to the occasion, as an exhortation to petitioning, and nothing else.

We were told, indeed, that this case is similar to that of Fyshe Palmer, who many years ago, was tried for sedition, found guilty, and sentenced to transportation. But this is a total mistake. The case before you is very different from that of Fyshe Palmer, and from all the other cases which have hitherto been tried before the Court of Justiciary. It has been reserved for the present Lord Advocate to bring such a case as the present to trial, in which, if the verdict find the panels guilty of sedition, the right of petitioning, hitherto unchallenged, seems to be attacked almost in direct terms. The case of Fyshe Palmer was that of a seditious libel, an inflammatory hand-bill, containing seditious language, without any proposal to petition Parliament. We were told that this case of Fyshe Palmer was defended on the same grounds that were stated in defence at the beginning of this trial; yet the lord advocate declined to meet that defence particularly, and bear it down by the triumphant authority of Palmer's case. There was no resemblance between that case and the present. Fyshe Palmer recommended an appeal, on the subject of grievances, not to the legislature, but to a mob, the scum of the earth in the neighbourhood of Dundee,—to the sovereign authority of the multitude. The defence in that case was disregarded,—but what was it? It was said, that in this free government it is necessary that the press should be free. It was said that the people must have freedom to attack public men, and must be entitled to publish, not treason, not sedition, in a palpable form, but their thoughts in a free and independent manner. It was added, that Mr. Fyshe Palmer was not very sound in his mind. These were the defences for him. You will perhaps be surprised when I tell you, that my Lord Abercromby, who tried the case, held, in his speech to the Jury, that if a petition to Parliament had been in view, the libel of which Fyshe Palmer was found guilty would not have been of so aggravated a description,—would perhaps not have been considered a libel at all. "Much (he remarked) has been said of the purity of the intentions of the society; it is said they had nothing in view but moderate reform. But, Gentlemen, you will consider how far that is consistent, either with the tenor of the address itself, or with what is sworn to by Mealmaker, who drew the first draught of it, and who swears expressly, that at that time he had no second petition in his contemplation and that what was afterwards to be done would have depended upon circumstances. I much fear that here

Mealmaker is telling the truth, and that if they had not been attended to, the conduct of this society would not have proved so pure as their intentions are said to have been."* In that case, you will observe, that a seditious libel was dispersed over the country without any consequence being contemplated but that of inflaming the minds of the multitude. On the other hand, we have been at pains to shew, that the panels in this case were quiet orderly persons, not concerned with any seditious societies; not connected with any political parties, only feeling distress, thinking they had grievances to complain of, and that they could better their situations by petitioning parliament. They met together in the most orderly manner,—deliberated as it is usual to do in public meetings,—prepared resolutions,—prepared a petition,—and signed it,—and that petition, though couched in strong terms, was presented to the Houses of Parliament, considered, received, and laid on their tables. Is the right of petitioning, then, to be interrupted in this extraordinary manner, by bringing the petitioners into the Court of Justiciary?

Recollet that this was a meeting for considering the propriety of petitioning the legislature, and that the meeting would have been altogether nugatory unless the persons then met had been allowed to state their opinions to one another. In the first page of this indictment, the panel is charged with having wickedly and feloniously delivered "a speech containing a number of seditious and inflammatory remarks and assertions, calculated to degrade and bring into contempt the Government and legislature, and to withdraw therefrom the confidence and affections of the people, and to fill the realm with trouble and dissension." Gentlemen, wherever the people are exposed to grievances they necessarily must, when they meet to consider the means of redress, express their sense of these grievances; and I ask whether it be possible to state public grievances, especially grievances arising from such a source as over-taxation, without in some way or other reflecting on the Government. In the exercise of our right of petitioning against grievances, these grievances must be mentioned; and it is impossible to mention them, or even to allude to them, without bringing the Government into discredit. For example, let a petition be presented against over-taxation, whatever were the causes of the evil,—wars just or unjust,—unavoidable misfortunes, or misconduct in public affairs,—it is lawful to state the grievance. But can it be stated without affecting more or less, or attempting to affect the public opinion as to the merits or demerits of administration? Every public statement respecting public affairs has that tendency. But are the people to be interrupted on such grounds, in the exercise of their just rights. It is of the essence of their right to complain

of grievances, and therefore I apprehend you must disregard entirely those general expressions in the indictment, charging M'Laren's speech as tending to bring the Government into contempt. The petitioners felt grievances;—they prepared petitions, and it is impossible to state a public grievance without throwing blame upon the Government. I do not mean to examine the question, whether there really was any blame attachable to Government; for it is the same thing in this case whether the petitioners were right or wrong in their statement. My defence is, that they were in the fair prosecution of legal views. Suppose no words to have been uttered but what would, in other circumstances, have been considered seditious, their having had a right object in view is a good defence. But every sort of obloquy has been thrown on the petitioners, without any notice of the lawful object they had in view, as if their object were to be laid entirely out of consideration.

The legality of the object, and the situation in which the speeches were uttered, are the most important circumstances of the case. Every thing else is of a trivial and subordinate nature. But let us see what the panel is alleged to have said. No positive evidence has been adduced to prove any part of his speech, except a few words at the end of the passage quoted in the indictment, and, so far as I have observed, you have only the uncertain evidence of one person to these words. I shall remark upon the words in the indictment.

"That our sufferings are insupportable, is demonstrated to the world." I do not say whether their sufferings were insupportable or not; but they appear to have been severe, and the people were met for the purpose of considering them, and to join in petitioning for relief. Here I presume is no sedition.

"And that they are neither temporary, nor occasioned by transition from war to peace, is palpable to all, though all have not the courage to avow it." I do not say that proposition is palpable to every body. Some are disposed to think that the calamity has been occasioned in consequence of the sudden transition from war to peace, and some dispute that proposition. Some are of opinion, that if we had continued the war, at an expense of a hundred millions a year, we should have infallibly secured the national prosperity and greatness. I shall not attempt to settle these points, nor is that necessary to the present argument, and I beg leave to protest against the idea that I give any opinion upon them at all. Perhaps Mr. M'Laren may include me in his censure for my want of courage in not avowing my opinion.

"The fact is we are ruled by men only solicitous for their own aggrandizement; and they care no further for the great body of the people, than they are subservient to their own accursed purposes. If you are convinced of this, my countrymen, I would therefore put

* Fyshe Palmer's case 2 How. Mod. St. Tr. 371.

the question, are you degenerate enough to bear it? Shall we, whose forefathers set limits to the all grasping power of Rome; shall we, whose forefathers, at the never-to-be-forgotten field of Bannockburn, told the mighty Edward, at the head of the most mighty army ever trod on Britain's soil, "Hitherto shalt thou come, and no further;" shall we, I say, whose forefathers defied the efforts of foreign tyranny to enslave our beloved country, meanly permit, in our day, without a murmur, a base Oligarchy to feed their filthy vermin on our vitals, and rule us as they will? No, my countrymen." A commentary was made on this passage though it is not proved that the panel ever spoke it. The prosecutor takes it for granted, without evidence, that the words were spoken. I am, therefore, not under the necessity of defending these words. But are they in reality so culpable? Are they seditious? They are mere words of course, in expressing those public grievances to which they refer. Every child knows that they are the common and hackneyed terms used by petitioners for public reform, and (excepting one or two allusions, in which there is evidently no sedition), if they are not tame and feeble, they are at least neither seditious nor inflammatory. Every word applies to the professed object of the meeting in petitioning, and to no other object. The prosecutor applies some of the words to the king, but this is a misconstruction quite unworthy of my lord advocate. Ministers, and the possessors of borough interest, are the vile Oligarchy, who are said to feed their filthy vermin on our vitals, and rule us as they will, and this attack was justifiable in the way it was made. What would avail the right of petitioning, if there was no right to petition against his majesty's ministers and their partizans? Ministers may be impeached in parliament for their public conduct, and they may be complained of by the people in their petitions. Are petitions to parliament against ministers to be punished as sedition? What have we here? The opinion of the panel that the ministers have not acted in an honest way, or as ministers ought to do. The opinion is expressed a little strongly, but it does not go beyond legal bounds. The petition was afterwards laid before parliament, and was received with respect. Now the question before you is not, whether the ministers are culpable or not—not whether lord Castle-rough or Mr. Vansittart might bring an action for a libel or defamation—but whether there is any sedition in this speech. I ask you, whether there is any sedition in complaining of these ministers? Sedition is an attack on the sovereign of the state—an attack on the government, not on the ministers of the government. You may attack the latter in any way, without being guilty of sedition.

But farther, as to the passage about the oligarchy. It is generally understood that a few persons, not exceeding 300, are possessed of an influence in the House of Commons that is very pernicious to the state. This is the

Oligarchy, the government of a few by unconstitutional influence, alluded to in the panel's speech. Is it sedition to take notice, even by allusion, of such a public grievance? Is this sedition? Against whom is it sedition? against the King? against the Lords? against the Commons? against any branch of the legislature, or against the legislature taken as a whole? It is sedition against no person or legal authority whatever. It is, indeed, directed against the Oligarchy itself, which, in the opinion of the petitioners, is the worst enemy of the King, Lords and Commons. The King, Lords and Commons ought to be independent; and, if an unconstitutional influence rules over them, is it sedition to complain of that influence? Every friend to the constitution will complain of it, if he supposes it to exist. I apprehend there is nothing in this part of the charge; and while M'Laren denies having used these expressions about our rulers, I say there is no sedition in them. I would say so, even if the words had been used where no petition to the legislature was in contemplation. But, considering that the meeting was called for that purpose, nothing can be more unquestionable than that such language was not seditious.

I come now to the last of the words quoted in the indictment, and I hope to satisfy you that there is nothing seditious to be found in them. Allow me here to remind you of M'Laren's situation when he made this speech. It has been proved that the task of opening the meeting was imposed on him, contrary to his inclination, and came upon him rather unexpectedly. It was indeed proposed to him eight days before the meeting, but he was unwilling to undertake it, and immediately before the meeting he pressed Mr. Samson to take the business off his hands. An hour before the meeting Mr. M'Laren was again urged to open the business; and being in some measure compelled to it, he retired for a very short time, and made some notes of his short address to the meeting. You will see in the whole proceeding the most evident marks of haste. It is not proved that the last sentence was written in his notes. On the contrary, it was not written. He was placed on what is called the hustings, and delivered his speech during a storm of wind, rain and hail; from the noise of which, and particularly from the rattling of the hail on umbrellas, it was almost impossible to hear what he said. Besides the words contained in his notes, part of which he spoke, and part of which he omitted, he spoke other words which were not in his notes. What these words were is uncertain, as they could not be perfectly heard. A single witness told you he heard and recollected them, though he could not recollect any other words of the panel's speech. There is no great reason to rely on the recollection of the witness, though there is much reason to presume that the words had not the meaning given to them by the public prosecutor. The words in

the indictment are, "should he be so infatuated as to turn a deaf ear to their just petition, he has forfeited their allegiance. Yes, my fellow-townsmen, in such a case, to hell with our allegiance." But the passage is in different words according to the evidence of Mr. Finnie, whose recollection of words, delivered in the midst of hail and wind, and the noise of umbrellas, while nobody else could hear what M'Laren was saying, is the only evidence for the prosecutor of the sedition. Another witness said there was something in the speech about hell and allegiance, but he could give no intelligible account of the passage.

Now, is it probable that the panel should have so expressed himself, or is it proved that he used the words imputed to him? You see the rest of the speech does not appear in the same mutilated form with the passage given by Mr. Finnie. There is reason to believe, therefore, that the passage so mutilated is not the passage delivered by M'Laren. And yet you are called upon to rely implicitly upon Finnie, a single witness, to the words of a speech, though there was such a noise when it was delivered, that persons near the orator could not hear him: And this part of M'Laren's speech is said to have been seditious. Gentlemen, you must always bear in mind the occasion. No other passage of the speech was seditious. M'Laren was recommending a petition to the Prince Regent. He was speaking of his royal highness in the most respectful way, and in a warm strain of loyalty. "Let us lay our petitions at the foot of the throne, where sits our august prince, whose gracious nature will incline his ear to listen to the cries of his people." Here is the fondest expectation of being listened to. But it is natural to mingle, with the kindest and most dutiful sentiments, the severity of doctrine and reasoning, and, on this occasion, it is possible that the rigour of our constitutional law for extreme cases may have suddenly occurred to the mind of the panel. We all know that our constitutional rights and duties go hand in hand. This has been stated in every possible form in which a proposition of the kind can be stated. At the Revolution, the Lords and Commons held James to have abdicated the throne, merely because he left the country, and the illustrious house of Hanover was at last established, because James had failed in the duties he owed to his subjects. Again, in Scotland, it was not held that James had abdicated, but that he had *forfeited* the throne in consequence of his proceedings. Speculations on the subject, indeed, are delicate, and ought not to be much indulged in. But what was more natural than for M'Laren to urge the propriety of petitioning, by stating that the petition would of course be received, and that if the regent did not regard the cries of all his people, he would forfeit their allegiance? M'Laren did not say it was the duty of the Prince Regent to listen, right or wrong, to the petition then proposed. In this way the whole passage is not so unreasonable; and

where there is an uncertainty what the very words were, the most favourable interpretation must be given to them.

But, in the worst view of the words, they import merely that in an extreme case, which could not happen, allegiance would not be due, and such an alternative does not import sedition. If the words were imprudent, they were not seditious. They might indeed have been without a vindication, if they had been used at a public meeting where no such words were warranted by the occasion, and where the meeting was not for the purpose of petitioning parliament. But consider the time when the words were used. The recommendation of my lord advocate to this effect was quite correct, and I desire you to keep in mind that there was a petition at the time under consideration, and that expressions might then be more allowable than at another time. The sacred right of petitioning is the bulwark of the right of free discussion. Discussion may be allowed preparatory to a petition, that would not be endured at any other time. Discussion is necessary on all such occasions. Free words may on these occasions be used when speaking of ministers, and generally of public men, as well as of public measures. Are not these propositions self-evident? Supposing it were asked, whether any of you have a right to write a letter to a correspondent, and send it by the post. The answer would be, you have a right to do so; there is no law against it. But what if you have no right to use pen, ink, and paper; no right to lift the pen, to put it in the ink-holder, or apply it to the paper? These acts have the same relation to writing a letter, that the right of canvassing what are grievances, has to the right of petitioning. You have the right of petitioning, which includes the right of meeting and canvassing the subject of your petition. Thus the right of discussion is presupposed in the right of petition.

As to the language that is legal and warrantable in petitioning and previously discussing, the mode of petition, it is well known that parliament may be approached with language as strong as any part of this pamphlet, and certainly stronger than any part of the speech of the panel. As evidence of this, take the votes of the House of Commons, and you will find more violent and bitter expressions of grievances, than any in this publication. I may read one or two of these petitions, which have been appointed by the House to lie on the table, and which the House would not have thought itself bound to receive, if they had considered the language as improper in a petition to parliament. I hope Mr. Grant will be allowed to read them for me.

Mr. Grant.—This is an extract of a petition from Bristol, presented to the House of Commons on the 29th January 1817 [*Reads from the Votes*]. "That no man of sincerity will affect to believe that such a squandering of the resources of the country for such purposes, and

that such a destructive power in the managers of paper money, would ever have existed, if the members of the House of Commons had been the real representatives of the people, instead of being, as they notoriously are, the mere tools of an ever-grasping and tyrannical Oligarchy of boroughmongers; that it is in vain to hope for any real remedy, for any solid and substantial relief, except through the means of such a reform in the Commons or people's House of Parliament as shall ensure to the people the speaking of their will through the means of representatives, annually chosen by all men who have attained the age of twenty-one years, seeing that all men pay taxes, and that all men have lives and liberties to protect—Ordered that the said petition do lie on the table."

On the same day, a petition from the township of Quick was presented and read, but it appears to have contained expressions which were deemed offensive, for [reads from the Petition] "a motion being made, and the question being put, that the said petition do lie upon the table, it passed in the negative."

On the same day, the address and petition of the town of Oldham was presented and read, in which are the following expressions: [reads] "In the midst of all these calamities, the ministers, in conjunction with an unconstitutional and corrupt House of Commons, have proceeded to vote away a great part of the public money to superfluous and unnecessary purposes, the whole of which evils the petitioners ascribe to the want of a real, unbiassed, free, lawful, and annual election of the members of the Commons House of Parliament; instead of which, the petitioners see, in that House, by peers and other boroughmongers, hundreds of its seats usurped; that numbers more of those seats, through the gross venality of monopolizing corporators, are notoriously bought and sold, and a large portion of the members of that House, who ought only to sit there as representatives of the people, are, nevertheless, placemen and pensioners of the crown, and receive, in salaries and emoluments, upwards of 200,000*l.* a-year out of the taxes; wherefore the petitioners feel it to be their duty to protest against that corrupt and factious usurpation of seats in that House, by which freedom is destroyed, and our once happy country threatened with slavery, starvation, convulsions, and ruin; for, in an usurpation which inflicts on the whole community taxation without representation, nought but despotism can be discovered, nought but ruin can proceed. And the said petitions were ordered to lie upon the table."

Immediately after which, it appears that [reads] "A petition from Ashton-under-Line was presented and read, containing the same allegations and prayer as the petition of the inhabitants of the township of Quick, which was this day presented to the House. And a motion being made, and the question being put, that the said petition do lie upon the

table, it passed in the negative." And another from the inhabitants of Delph was presented; [reads] "And a motion being made, and the question being put, that the said petition do lie upon the table, it passed in the negative."

On the 31st January, a petition from the town of Halifax was presented and read, setting forth, [reads] "It is now notorious that the people of this kingdom do experience flagrant wrongs and great misfortunes, because their birthright of making their own laws has, through the decay of ancient boroughs, as well as through fraud and usurpation, been taken from them; for it is universally known that the nation are not represented in the House; in this complication of decay, injustice, and wrong, in this ruin of the constitution, whereby the people have been defrauded of the self-preserving power of making, through real representatives, their own laws, the House must see the causes of which all the present calamities of our country are the effects: here, and here only, the cause of war, here the cause of public debt, here the cause of an intolerable taxation.—The law, through the resistless power of those who have usurped the seats in the House, assumes a severity revolting to humanity, and is carried into execution by the bayonet; wherefore the petitioners feel it to be their duty to protest against that corrupt and factious usurpation of seats in the House, by which all freedom is destroyed, and our unhappy country is threatened with convulsion, slavery, or subjugation; for in a usurpation which inflicts on the whole community taxation without representation, nought but despotism can be discovered."

"A petition of the there-undersigned inhabitants of the town and neighbourhood of Halifax, in Yorkshire, was also presented and read; containing the same allegations and prayer as the last preceding petition.—And the said petitions were ordered to lie upon the table."

There are many other petitions which I may read couched in equally strong language.

Mr. Clerk.—I think enough has been read, and we need not fatigue the Court and the jury.

Mr. Grant.—Particularly on the 12th of March I see there are several petitions received in the same terms with the petition from Halifax.

Mr. Clerk.—This is but a specimen of the petitions which have been sent to, and received by parliament. Such are not, indeed, petitions which the House of Commons is disposed to grant. But the privilege to think and talk on these matters, to take advice about them, to hold meetings about them, and to make them the subjects of speeches, resolutions, and petitions, unquestionably belongs to the people of this country. The right of petitioning is so sacred, that the most overbearing and arbi-

trary administrations have never proposed to restrict it altogether. You will pause, then, before you pronounce a verdict, which, as the public prosecutor demands it, would, in terms almost direct, be a verdict against the right of petitioning: for the same argument that has been urged against the panel would apply against speeches relative to petitions complaining of any other public abuses, if the distresses of the people should be never so great—abuses against which no remedy could be looked for but by petitioning the legislature, and stating the grievances in the language of truth. Were such a pestilence to be introduced in this part of the island, as prosecutions to subvert the right of petitioning, the consequences would indeed be calamitous. The right of petitioning, so tenaciously held by our ancestors, may be still more necessary to our posterity. The present case ought not to have been prosecuted, even if the words had been more inflammatory than they are. It has no resemblance to a case of sedition. In the case of Muir,* and a variety of others, in which men were tried and punished for sedition, a wicked purpose was always clearly established, and the accused had no pretence for saying that they looked toward the legislature for the accomplishment of their objects. The moment that such a *bona fide* purpose is in view, the subject has a right to express his opinion, and he cannot be subjected to punishment for it. If he could be punished, the right of petition would be at an end.

Gentlemen, the panel is a person of irreproachable character, and his former history, and in particular the loyalty and public spirit of his conduct on all occasions, leave no room for any presumption that he would be inclined to seditious practices.

[Mr. Clerk then read the following certificates:]

Kilmarnock, 2nd April, 1817.

This is to certify, that Alexander M'Laren has resided in my house as a lodger for the space of seven years against May next, behaving himself soberly and honestly, free from wrangling or quarrelling, and as a loyal subject, speaking respectfully of government, and all other rulers in their different stations, so far as is known to me.

JOHN STRATHERN, wright.

Kilmarnock, 2nd April, 1817.

This is to certify, that Mr. Alexander M'Laren has resided in Kilmarnock for upwards of eight years, and has been several years in habits of intimacy with the undersigners; and during that time, to the utmost of our knowledge, has behaved in a sober and peaceable manner; at all times has been a loyal subject, a firm

friend of order, and a habitual respecter of authority.

JOHN STRATHERN, wright.

JAMES ALEXANDER, sen. weaver.

JOHN BUNTIN, weaver.

WM. HOWIE, builder.

GEO. SMITH, grocer.

JOHN PAXTON, brewer.

JAMES CRAIG, weaver.

JAMES BUNTIN, shoemaker.

Mr. Jeffrey.—You are aware, gentlemen, that it is now my duty to address you on the part of the other panel; and, after what you have already heard, and the ample opportunity you have had to consider the whole of the evidence during the trial, I flatter myself I shall be able to discharge this duty without encroaching much longer on your time. I wish, first, to address a word or two to you on the facts of the case, and to lay before you, in a detached form, those that relate to this panel, Thomas Baird—after which I must trouble you with a few words on what I conceive to be their reasonable and legal import.

It is one comfort in this case, surrounded as it is with discomforts and anxieties, that with regard to the facts, there can be no reasonable doubt in your minds; nor am I aware, indeed, that upon this part of the subject there is any great contradiction between the opposite sides of the bar. And, therefore, I shall give but a slight abridgement of the facts, separating those which apply to this individual, the truth and import of which I do not conceive liable to any question.

You will remember, it has been put in evidence before you, that he is a man in a good condition in life, which is denoted, indeed, by his appearance. He is in reality a most respectable person, who had long resided in the town, among whose citizens he had taken an active part on this occasion; and, even in the judgment of those who differed from him, in opinion on political subjects, and who, from their official situation, had the power and the duty to prevent him from committing any wrong, he was universally esteemed incapable of harbouring evil intentions against the constitution. He was entrusted with military and civil offices, which are only committed to known and tried hands. He is past the early period of youth, when great imprudence may take place, notwithstanding principles generally correct. He has a young family dependent on him for their subsistence; and earns his livelihood by a trade which depends for its success on his good character and conduct. It has been proved that his general conduct is not only correct but exemplary, and that he has been in the habit of communicating and discussing his opinions on politics with a variety of persons who did not concur in those opinions; and therefore, while the other panel, from being less known in the town, could not have his character so generally spoken to, we who have been entrusted with the defence of

* 2 How. Mod. St. Tr. 117.

Baird, and who being less circumscribed in this respect, could afford to make a selection of our witnesses, have purposely abstained from taking the evidence of those who concurred in his political sentiments, or bringing one reformer to testify in favour of another, and have thought it better to take the evidence of those only who were naturally influenced by opposite motives and principles.

You heard from them that this person has always been remarkable for the frankness with which he delivered his opinions; and that, even when expressing them with the heat and exaggeration inseparable from such discussions among parties who do not agree, they always appeared to them perfectly innocent and fair. Browne, Wyllie, and Miller, from profession and situation the most figuring men in the town, and the most notoriously adverse to any change in the established order of things, all say he uniformly maintained such language as impressed their minds with a conviction that he was strongly and decidedly attached to the constitution of this empire, though he wished for a reform in the Commons House of Parliament: that he was a mild person, and of a character incapable of exciting, in any way, any degree of disorder or discontent against government.

I am aware, that a good moral character is not in general an answer to a charge of crime, if there is distinct proof of its having been committed on any particular occasion; and that an allegation by the prosecutor of a wrong committed by a person whose moral character previously stood untainted, will, if supported by positive evidence, lead to the punishment of that person, notwithstanding such previous good character. But I submit to you, that in a trial like this, depending mainly on the question, whether the panel harboured a wicked, felonious, and seditious purpose,—or, if he did not harbour such purpose in its obvious and naked form, whether he was chargeable with that disregard of the safety of his neighbour, or that recklessness as to consequences, which, in the eye of law, is considered a moral wrong, and punished as wicked and felonious:—I say, in a case in which every thing depends on this; where the matter is intrinsically of a doubtful nature; where it is a question whether a person has gone beyond a pardonable vivacity of discussion, and ventured to use language which the law holds to be demonstrative evidence of improper purpose—if, in these circumstances, you find a man standing in such a situation as the panel—not tempted to expose himself to public view—not gifted with powers of eloquence—no way accustomed or inclined to try his talents in that way—carrying on a thriving trade, which he has no disposition to leave—and standing comparatively uninjured, while others around him were on the verge of ruin—of peaceable habits—of moderate political principles—under such circumstances, I say, you are bound to presume for his innocence,

unless criminal intention be clearly and unanswerably established against him. The legal presumption of innocence, in such a case, amounts almost to a moral certainty.

In this situation, Mr. Baird, placed as he was in the heart of a manufacturing district, could not fail to be a spectator of very general and very deplorable misery. A sharer in it he must also have been in some degree, as all persons must be who are connected with the sale of commodities from which purchasers are gradually withdrawing. Although the causes of the general distress did not so immediately or directly affect him, yet he heard and witnessed those clamours and complaints, which certainly, in this part of the island, have not hitherto broken out into those rather compassionate than criminal excesses, to which the infirmity of human nature, rather than the malignity of individuals, or of any class of the people, may be hurried in seasons of such unprecedented calamity. He could not help hearing those complaints, and listening to the remedies which were proposed for those evils; and it appears, that he concurred in the opinion which some persons have held—and he confessed it to all with whom he had occasion to converse—that a great part of the evils arose from a defect in one of the great bodies of the legislature—from want of due communion of sentiment between the body of the people, and those whose function it is to express their sentiments, and watch over their interests. That he entertained such an opinion, there is no doubt. Not going so far, perhaps, as thinking that a reform in the representation of the people would remove the evils then existing, he, in common with many persons, was of opinion, that it might tend at least to prevent their recurrence. He certainly did favour the professed object of the meeting, and in this, if his guilt began, it also ended. He undisguisedly gave his countenance to a general meeting for petitioning the three branches of the legislature, for redress of grievances, and reform of the Commons House of Parliament. His conduct in this particular was worthy of the sincerity with which it was dictated. Associated with some others whom you have seen, they agreed as to the propriety or expediency of encouraging this method of proceeding; and at the same time, they determined not to take this step of calling a meeting for petitioning the legislature, if it was opposed, or likely to produce any opposition, in an official form, on the part of the local magistrates. Accordingly Mr. Baird, as one of the most respectable of the committee (all of whom seem to have been cool persons enough when the heat of the action was over, and the field deserted), waited on the provost; and the provost told you, that though he disapproved of the meeting, he did not think he had power to prevent it. He seems actually to have gone out of town when it took place: so far was he from thinking there was any danger to be apprehended: and he was just.

led in his opinion from the result—there was no tendency to tumult or disorder.

At that meeting, Mr. Baird, no doubt, attended. He was there and heard the speeches that were delivered; some of which, undoubtedly, contain very indecorous and improper expressions—expressions which it may have been preposterous to utter at a meeting convened for lawful and constitutional purposes. But if persons go to such a meeting at all, they may expect that preposterous expressions will be used, on both sides, perhaps, of the question. But is a man to be punished for sedition, if he accidentally hear seditious language employed by another person? Not only was the measure of calling a meeting for petitioning perfectly lawful in itself, but the behaviour of those who attended seems to have been orderly, decent and exemplary. I do not know whether your views concur with those of Mr. Baird, but thinking as he did on the subject, he acted properly. It is to be taken for granted, that the petitioners were sincere in their opinion, and that in taking those measures, they thought they would be of great effect in producing good.

At that meeting, then, Mr. Baird did not speak. He heard the speeches in question,—but as that could not, of course, taint him with guilt, I am sure you will go along with me in thinking, that up to this point there was nothing culpable in his conduct; and therefore the very beginning and ending of the criminality imputed to him consists in his having afterwards (I cannot say, concurred, but) submitted to a resolution forced on him by the majority of those persons, with whom he was associated, in an application to parliament, for having these orations printed, in a full, true and particular account of the whole proceedings. This we stated in the outset; and it has been proved, without contradiction, by the testimony of a variety of witnesses. In the examination of the several witnesses, no indication ever appeared,—no hint, even in the most distant manner, ever presented itself,—that the publication of the speeches was made with a view that seditious doctrines should be propagated, or that the contents of the work should be studied by persons at a distance. The publication is clearly proved not to have had any such ambitious object; but to have been made in the humble view of securing a little paltry gain,—to defray the expense of nailing up a few boards for the accommodation of the orators, and providing a few sheets of gilt paper for three or four petitions to be transmitted to the Prince Regent and the Houses of Parliament.

It occurred to the petitioners, that the only means for defraying this heavy expense was to print an account of their proceedings,—that among their neighbours, whether those who agreed with them, or were opposed to them in political opinions, they might sell as many copies as might raise the sum which was wanted. Through the whole transaction there

is not the least vestige of any desire to have the work read or admired, either for mischief or glory. The only object was to get a small number sold; and accordingly they seem all to have been sold—without so much as a single copy having been given away. Mr. Baird, into whose hands, as one of the committee of the petitioners, a number of the copies were impressed, got rid of them, it is true, with more facility than another man who was examined to-day did of his copies. But this was merely because he keeps a well-frequented shop, not because he was in any way zealous for their circulation. The nature of Mr. Baird's trust and management in the business were proved to you by his own shopman, and his own declaration; and it has been proved, that if he got rid of every one copy he was possessed of, shopmanlike he exacted his groat for every one of them which he sold. The printer said that about 400 copies were printed. Some remained in the hands of members of the committee who did not get them sold. They were not sold to booksellers; because the petitioners could not afford to pay booksellers' commission: they were sold for a particular purpose, which I have specified, and were sold in the cheapest way. Some of them were sold in a grocer's shop, where they might be of use to wrap up goods that were purchased; other members of the committee, however, could not sell their copies, because they could not, perhaps, be of such immediate use to the purchasers.

You see the nature of this transaction, then, and you must now be aware that it is conformable to the statement which was given of it at the beginning. Mr. Baird took no step disconformable to his general character of a quiet, modest, honest, well-disposed, good man; he made no speeches, but disapproved of various speeches and passages in speeches (which fact has been fully made out), as harsh and offensive; and these are considerations which certainly are of importance in determining whether he is guilty or not of sedition, as charged against him in this indictment.

These are the whole of the facts of this case; and you will be pleased to add to these facts what is proved to you by the evidence, and which the dates and the documents themselves instruct, viz. that all this took place publicly. It was known to his majesty's advocate, and all the lieges, that this was done so long back as December 1816; and you have seen that 400 copies of the publication were all that were printed. I do not think you will imagine it is very likely the authors and printers expected a great sale. None of the authors were much known in the literary world, and none of them, I think, professed themselves to be politicians. The object was to sell copies to the curious country gentlemen and the gossips in the neighbourhood. It was reasonable to think, too, that some people might have this curiosity, who were prevented by the weather from gratifying it, by attending at the meeting;

for you will recollect, that the speeches were spoken in defiance of the angry blasts of heaven,—in the midst of hail, snow, and wind, and notwithstanding the opposition of the elements. Petitions in conformity with these speeches were engrossed; and it is not denied, nor can there be any doubt of the fact, that they were presented, and that they were received with the usual civilities with which persons in those high quarters are wont to receive such communications.

All this was done months ago, and at a time when no alarm about sedition obtained here or in any other quarter of the kingdom; and Mr. Baird was allowed to sell his commodity of pamphlets, and to converse with his neighbours about them, without any body hinting that he was in any danger, not from what he was doing, but from what he had done weeks before. But, after that, some seditious proceedings took place in another quarter of the island. Certain mobs had excited considerable alarm in the mind of the Legislature, and of the inhabitants of the metropolis, where a large assemblage of people is easily convened, and disturbance easily excited. They did commit some little outrage, and occasioned some fear for the peace of the city.* This fear was propagated to the extremities of the empire,—and then the vigilance of the Public Prosecutor in this country goes back to a former meeting, in a remote quarter, which had not been attended with any tumult, and had not been followed up with any the slightest criminal consequences. A book, consisting of foolish, ridiculous specimens of rustic oratory is on this occasion brought forward,—and this quiet, esteemed and trust-worthy man is brought to your bar, and arraigned for having wickedly and feloniously circulated sedition.

We come now to consider what is the import of the facts in this case, and what is the verdict you ought this night to pronounce on the person, whose character through life, and whose conduct upon one occasion, have been detailed to you in evidence to-day: The question is, Whether the evidence to which I have referred is such as to compel you, contrary to that general presumption of innocence which law establishes for every accused person,—contrary to that special presumption of innocence which the whole tenor of the defendant's life and conduct morally establishes in his favour,—whether that evidence, I say, be such as to constrain you to pronounce that his conduct upon this occasion originated in malignant and diabolical purposes,—purposes, from the success of which he had every thing to lose and nothing to gain, but was to be merely an inglorious stirrer up of sedition in the first instance, and a victim to its guilt and insanity in the second.—The question I say is, Whether the evidence goes to shew that such is the character of his offence,—that such folly

must be imputed to a man of sense and character, and that you cannot help saying, on your oaths, that he disregarded all consequences to others, to his country, and to himself, and was determined to stir up sedition and disturbance.

The essence of this, and of all other crimes, consists in the moral defect by which they are engendered; and therefore it is, that every criminal indictment necessarily charges, that the offence for which it threatens the accused person with punishment was committed *wickedly and feloniously*; and I believe almost every indictment for crimes of this description contains in more express words than occur here, an allegation that the acts set forth and described were done *with an intention* to excite sedition and disturbance. It is the intention, in short, in which the crime legally and morally consists. I do not find fault with the omission of that in the indictment. I rely on the candour, propriety, and wisdom of the Bench, to give you the requisite information on the subject: and I am sure you will be told that the words indispensably inserted in this indictment are in their own statement equivalent to a direct allegation of intention in the commission of the crime charged; and that a more particular charge of intention could not have served any purpose.

When I say this is a necessary part of this, and of all other charges of sedition, you will give me so much credit as to suppose that I do not mean to assert that the Public Prosecutor is bound to bring direct and positive proof of a criminal intention having been actually expressed, or that it is not competent for him to argue that the nature of the acts themselves,—the circumstances in which they were committed,—the situation of the party,—the temptations to which he was exposed,—his whole conduct before and after the time he committed the acts,—the general and well-known complexion of the times when the acts were done, are to be taken into consideration, in forming a judgment as to the intention with which the acts were performed.—Such considerations cannot but afford evidence of the purpose and intention; and in questions with regard to almost all other crimes, this inference is generally so plain and necessary as to make the task of the Jury comparatively easy. If a man aim a blow at another, and knock out his brains,—if a person break in at night and rob a house, or if he forge a bill, and draw money for it from a bank, it is vain to say there is a necessity to bring evidence beyond the fact itself, to prove a malignant purpose in the one case, or a purpose of fraud in the other. But observe the character of sedition as defined, or attempted to be defined, by my learned friend, and, indeed, by all the lawyers. I am not finding fault with my Lord Advocate for not properly defining sedition, because it is one of the disadvantages attending such a case, that a sufficient and satisfactory definition is not to be easily found;

* See James Watson's Case, Vol. xxxii. p. 1.

And therefore we are constrained to go to a large and general consideration of the specific facts, from which the criminal intention is to be deduced.

What, then, is sedition? I do not object to the prosecutor's statement on the subject. He described it generally as any act, writing, or speech, the intention and probable effect of which is to excite disaffection towards the Government, and tumult and commotion in the country. Now, you will observe here, that in order to constitute sedition, it is not absolutely or indispensably necessary that the prosecutor shall bring proof of discontent or disturbance having been actually excited or having followed in consequence of the acts charged. Nor should I think it right or safe to make the fact of having excited such discontent or disturbance the criterion for the crime of sedition; for there may be many speeches and writings by which tumults and disaffection may eventually be excited, without any such intention on the part of the speaker or writer. God knows there have been many measures adopted by Government here and elsewhere, and probably believed by them at the time to be most expedient and proper, which have led to disaffection and disturbance, to dreadful wars and most sanguinary remedies. Here, then, we feel at once the practical difficulty of applying the definition of the crime which is here charged. Sedition is said to consist in any acts by writing, speaking, or otherwise, that indicate, with sufficient clearness, a purpose to divert the affection of the people from Government, and to excite hatred and dislike against the said Government, leading to rebellion, tumult and public confusion. We have evidence of this when a speech or writing actually produces such an effect. That is the most certain, and perhaps the only sure proof that a speech was uttered for such a purpose—that it has done so. But I do not say that this is absolutely necessary. It is enough if there are acts established which are clearly and unequivocally intended to produce such an effect: But all this just places us under the necessity of judging and conjecturing as to the intention,—not upon such evidence as the shooting a man through the head is of intention to kill; but by the exercise of a sound judgment, and a delicate discrimination upon nice and subtle questions of politics and morality; in the course of which we must endeavour to divest ourselves for the time of all our cherished prejudices and partialities, and to judge of a probable intention, from facts, as to the import and character of which perhaps no two men will agree. In order to determine whether disorder and discontent were intended to be excited against the Government, we must consider whether the objects that were professed to be in view,—the means that were adopted for their accomplishment,—the words that were used,—the situation of the audience,—and the result of the measures adopted, do all or any of them

amount to a proof of such intention, and whether they are sufficient to entitle a Jury upon their oaths to say, that such must have been the purpose and state of mind from which the acts proceeded,—acts, you will observe, in their own nature, unavoidably equivocal, and as to the true character of which no two men of opposite parties would form the same opinion.

You must be already aware, then, of the extreme caution with which a Jury is bound to proceed in considering a case of this complex kind. It can never be pretended, in the broad words of the definition of my learned friend, that, to express dissatisfaction with the proceedings of government, or opinions against the existing laws, or laws intended to be brought into existence, can be arraigned as improper and seditious acts. On the contrary, it is from such acts that all the great improvements in our institutions have originated, and to such proceedings are we indebted for all our distinguished advantages as a free, a powerful, and enlightened people. Not only then is it the privilege, but it is the duty of those who think that measures may be taken for bettering the situation of the country at large, to state their sentiments, and, if necessary, to complain aloud of the existing evils and imperfections. It may often be highly proper, and absolutely necessary, to point out the disadvantages attending present institutions, and to employ every form and mode of eloquence in order to recommend the adoption of those measures and principles, which may lead to regulations and laws that are better and more efficient. Petitions for the abolition of the Slave Trade,—for Peace,—for the abolition of the Income Tax, were opposed by those in the actual administration of the Government: But it was never, I believe, imagined, that these petitions had the most distant approximation to the shameful crime of sedition. But see where we are at this first step. Can it be doubted that the agitation of all these questions was offensive to Government? Can it be doubted that petitions setting forth the evils of the Slave Trade were opposed by the Government,—that trade which spread and encouraged ignorance, vice, and misery in Africa,—and which debased, and would have perpetuated the degradation of the human character in the west?—Can it be doubted that the complaints made in petitions for Peace, charging Government with unprincipled conduct in carrying on the war,—a war of advantage to a few individuals, but unnecessary and ruinous to the country, and attended with an enormous and prodigal expenditure of human blood, and of the means of national prosperity,—can it be doubted that such complaints were disagreeable to the Ministers?—Can it be doubted that petitions against the hateful and inquisitorial but productive tax on income were opposed by them?—Can it be doubted that the proceedings at public meetings respecting these objects tended

to excite violent indignation among the people against existing laws and establishments; and, with regard to a great number of the measures alluded to, excited the indignation of the people against those who are entitled to be called and are known to be our rulers? Many of those measures of public policy which I have stated, were very warmly defended by the Government; and it may be very truly said, that, in loading such measures with the opprobrious epithets which all men now agree they deserve, we were throwing an odium on our rulers.

But, says the public prosecutor, our rulers are the King, Lords, and Commons; and all attempt to excite hatred against them, is clearly within the narrowest definition of the crime of sedition. To this, however, I reply, that our rulers are his majesty's ministers for the time being, and those, and those only, who concur in their measures. It is only through these ministers, and by their advice and influence, that the sovereign is understood to act, according to the principles of our constitution. The ministers are the king; and it is not lawful to impute any bad act to him personally, his acts being the acts of the ministers. And who are the Lords and Commons? The majority alone of them having been in fact our rulers, the minority have nothing to do with it.—If, therefore, it has been the pride and boast of Great Britain, eminently distinguished for the sense, the virtue, the morality, the science which it contains, that by the right of discussing politics and petitioning the legislature, oppression has been shut out, corruption exposed and circumscribed, and, in despite of their rulers, the people enlightened and enabled to judge of public men and public measures;—if it is on account of this invaluable right that we enjoy and pride ourselves among the nations;—where is the propriety of rashly interfering with the exercise of this right, and why object to the speech of a petitioner, because some things in it may fall under the general terms of the definitions which lawyers have given of the crime of sedition? Perhaps no better definition of sedition could be given; but here the intention was, not to excite tumult or disorder, and therefore no sedition was committed. The petitioners did not approve of the measures of our rulers, — they believed a reform in the representation would be beneficial, and they stated their sentiments on these subjects, to the King, Lords, and Commons.

But my learned friend said, the conduct of the panels was calculated to excite dissention. In one sense I admit that it was: But I have no such horror at dissention as the learned lord. There is a dissention known to this country, and known to all free countries, and to them only, which, however terrible it may appear to the sons of habitual slavery, or the minions of arbitrary power, or the contented and envied possessors of present influence, is of that wholesome nature, that on it the life

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and health of the constitution ultimately depend. It is not a frightful commotion, but a healthful exercise:—not an exhausting fever, but a natural movement, proceeding from the vigour of the constitution, and at once indicating and maintaining that vigour unimpaired. Wherever men are entitled to rise to high stations, whatever their birth and condition may have been, there great dissention will inevitably be found. In that fierce, but generous struggle, there will necessarily be great heats, and appearances of violence and intemperance. There will be some real excesses also, and a great deal of dirt will be scattered about in the competition,—which is all the injury that the main body of the people will experience. In a free country where the principles of government are well understood, and the laws well administered, parties will ever be found opposed to parties, all of them calumniating and abusing one another, taking advantage of the slips of their adversaries, and fastening on them the keen and eager eye of hostile animosity,—contending with the most strenuous emulation for those places and offices attended with power and patronage, which are then only respectable and honourable, when filled by persons distinguished for those talents, and that industry and merit, which can neither be generated, nor made manifest on any other scene. This dissention, though the parties engaged in it are somewhat reviling and reviled, is the life, and heart, and spirit of our constitution; and true policy should promote discussion on those great points, on which discussion must always be keen, and in some degree, stormy and violent, because it is on them that the liberty, the prosperity and happiness of the nation depend, and to them that all men of spirit, ingenuity and talents have devoted their whole lives, from their birth to their last moments. The lives, accordingly, of almost all the great men who have adorned the history of this country, have been a continued scene of warfare; and, except in a few instances of individuals endowed with more than usual placidity of temper, our most eminent statesmen may be said to have passed their lives in traducing the conduct and measures of their opponents, glorsing over the faults of their partisans, and employing the strongest language in denouncing what appeared to them contrary to the spirit of the laws and the constitution. If this dissention were prevented, liberty would be extinguished. That very hostility which appears to excite so much apprehension, is the parent of public prosperity, and of all the advantages in a free state for which it is worth while to contend.

The right of exposing misconduct in the administration of the government, and of applying in a constitutional form to the legislature for redress of grievances, whether real or imaginary, is the result of this wholesome privilege of discussion. It might perhaps be maintained, that under the right of petitioning.

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the legislature for any object which the persons petitioning might sincerely think fair, reasonable, and proper, language, however strong, if expressive of the sincerity and strength of conviction of the petitioners, should be permitted. The very publicity of the act of petitioning,—the ancient date of the right,—the constant and almost immemorial experience of its good effects,—and, above all, the appearance it has of reliance on the legislature, protect almost everything that may be done under this invaluable privilege. But I am far from exposing my case to the hazard of maintaining, that in the exercise of this great public right excesses may not be committed, of which men ought to be ashamed, and which the law is called on to avenge. Without meaning to detract from the powerful argument you heard from my learned friend Mr. Clerk,—I say that, even when met for petitioning parliament, excesses may be committed by speaking and writing, for which the people are responsible to the law, and for which a jury may be reluctantly constrained to punish them. In such cases, their intention is to be gathered partly from the nature of the objects pursued, and partly from the language employed, and the means recommended for the accomplishment of their purposes. If a person should pretend, or even be mad enough seriously to propose, to petition parliament for the abolition of the Christian religion,—for deposition of the king, or dismissal of the House of Lords,—for division of property,—community of wives, or such objects,—(there can be no seriousness about such things, but suppose that such petitions were proposed),—the public prosecutor would be justified in interfering, and even the desperately ignorant could not be screened in the prosecution of such views. But supposing the object not so plainly extravagant, and obviously criminal, as any of those I have alluded to; still if the means held out for obtaining it are clearly criminal;—if, at the same time that a petition to parliament is recommended for universal suffrage, or any thing else, the petitioners are exhorted to appear with pistols in their hands, and to use them to enforce their requests, or even to do any thing implying an offence against decency and good order, transportation or a more severe punishment might be justly inflicted on the transgressors.

The point then at issue is, What is the degree of criminality that demands, or whereabouts are we to look for the excess which authorises the intervention of the law?—When is it that the avenging voice of a jury is required?—and has such a case occurred in the present instance?—It is by no means enough that you individually regard the objects which it is proved those persons had in view with their petitions, as erroneous, improper, and absurd objects. That is not the question which is committed to you to try. You are to judge whether they were actuated by seditious intentions. The object of the petitioners, in this

case, was parliamentary reform; and, as far as I can see, a change to a great extent in the representation of the people was contemplated. They wished for annual elections, and that all should have votes. You may think such a plan mischievous, and an attempt to recommend it productive of bad consequences. I rather think so myself. I think the introduction of annual elections would be a hazardous experiment. Universal suffrage is practically impossible; and if possible to be introduced, it would probably aggravate some of the evils it was intended to remedy. But ought such an opinion of mine, of yours, and of a great many others, to prevent persons holding different opinions from taking constitutional means for enforcing their opinions? Annual parliaments are beyond all question agreeable to the ancient practice of this country. Whether there ever was a law with regard to them, I shall not here pretend to determine. In point of fact, for many centuries, there were scarcely any others; and, upon the whole, I have no doubt there have been more annual parliaments held in Great Britain, than parliaments of a longer duration. Those who admire our ancestors and remote times more than I do (for I think, as to liberty, we are better off now than ever we were), may wish to have recourse to annual parliaments, and this desire may be innocent and laudable.—Universal suffrage, again, is agreeable to the theory of the constitution. There can be no doubt about that; and a greater approximation in practice to the theory of the constitution than at present exists, might perhaps be desirable. In all the books on the English constitution, the principle is to be found. But here again, to be sure, the theory and practice are disjoined. There never was any thing like what is now meant by universal suffrage established in these lands; for if we look to history, we shall find that the great body of the people were formerly in a state of villeinage under the aristocracy. Universal suffrage, however, is agreeable to the theory of the constitution. According to constitutional doctrine, every man has a representative in parliament. I might read a great variety of passages from Montesquieu and others, from which it is quite clear that they regarded this principle, that the people have a right to be represented in parliament, as the foundation of our liberties. Now, the fact is well known that some places are not directly represented at all—that some large towns choose no representatives,—and that there are representatives, on the other hand, who have no constituents. Now, it appears that the petitioners thought this wrong, and desired to introduce a practice a little more analogous to the theory of the constitution, which certainly was no great crime in them, whatever may be thought of the expediency of their views.

This brings me to some leading statements in the address of the public prosecutor. He says you may attack the Ministers, but not

the constitution. You must not deny that the King, Lords and Commons, are each of them, as now existing, the legal depositaries of the degree of power given to them; but you may attack the Ministers as much as you please. We are beholden to him, at all events, for the concession; but let us see what this distinction points at,—what it means. Does my friend mean that the people shall not petition against,—shall not complain of, any grievance which consists in a bad arrangement of any great branch of the legislature,—any class or order in the constitution,—in, perhaps, a new grouping, or a mischievous alteration of any thing in the constitution of the legislative body? What! Is it not competent to petition against the septennial law? Was it not lawful to petition for its adoption? I think the ministry of that day would scarcely have treated such an application as seditious; yet it made just as great a change in the constitution, as the adoption of annual parliaments would now do. Direct acts of parliament make changes in such matters every day; but from what do they originate? Not surely from the arbitrary will of Government, but from the sentiments of the nation. I never heard such acts defended as being measures of government, but as being conformable to wisdom, good sense, and propriety. The law establishing the inability of excisemen to vote at elections,—laws relative to residence of voters,—all these and many other arrangements touching the constitution of the legislature, have been made from time to time, and a great many have recently been made. Is it to be said that the people are to have no voice regarding such matters? that they may petition and interfere as to the imposition of taxes, but not as to the reformation or improvement of the body by which taxes are imposed? I entirely deny the existence of any such distinction. The right of petitioning unquestionably extends to every thing that is within the competence of the legislature to grant. It is not within the power of the legislature to abolish Christianity or the House of Lords, or any of the branches of the legislature. But, with regard to every measure which may constitutionally originate with government, the people may humbly petition, pointing out such reasons as appear to them to recommend or to oppose its adoption. This is the people's right. To meet for this purpose is lawful, and there is no reason for restraining them in their deliberations on such occasions. Over the great legislative body they have thus had a continual, uniform, and a progressive control, from the first dawn of freedom in the country down to the present time.

In the exercise of this control, they are not circumscribed to any particular class of topics, but may expatiate freely through every branch of our laws and policy. There are a great many authorities, which I need not read, to shew that propositions may on such occasions be maintained, the very mention of which has

been erroneously supposed by the prosecutor to infer blame. The panels are alleged to have said, they were entitled to break out into open rebellion if they did not obtain universal suffrage and annual parliaments. I have not discovered that they said this. I hope they will not obtain either of these objects; but it is competent for persons who think differently from me with regard to them to ask for them, and to state their reasons for doing so. That they are entitled to be heard, I maintain loudly and unequivocally, in opposition to all assertions to the contrary, assertions which would go to subvert the foundation, and extinguish the vital principles of our constitution.

But it is said that the words used here admit of no defence. It is your province, and yours only, to judge of the import of these words, and of the intentions of the persons who used them. I will not go over them all. One observation, however, it is quite indispensable to make, and that is, that you are not to form an opinion upon the import of the passages quoted in the indictment, without listening to, and pondering by yourselves all the other passages in the same paper. It has never been a rule in trying a case of sedition, that a single sentence is to be judged of by itself, and you are not entitled to proceed on that sentence as indicating the seditious character of the whole production, if, in point of fact, the great bulk and general character of the statement give the lie to the charge.

You are told that the expressions charged against the panels are seditious and inflammatory. I believe that some of the expressions are extremely absurd, and exceedingly improper, nay grossly indecent. But I maintain, that looking at them either by themselves, or in context with the other passages in the publication, and considering the occasion of the meeting, and the intentions of the parties, as demonstrated by their whole conduct, and by the evidence which has been adduced, you cannot by possibility find in the pamphlet any thing to force you to say, by your verdict, that the author, publisher or seller must have acted with the intention of subverting the constitution, or filling the kingdom with trouble and dissension. You will understand, then, that I do not wish to defend these expressions as free from blame; but I have again to warn you that you are not entitled to find a verdict against these men as guilty of sedition, merely because you may think, as I do, that they employed improper expressions, in prosecution of a lawful object by lawful means. If you could permit your own sentiments respecting the objects which the petitioners had in view, or your feelings of disapprobation of the language which they employed, to influence for a moment your opinion as to their legal guilt or innocence, the consequences to the law and the liberties of these kingdoms would indeed be tremendous. If such a principle of judgment were to be admitted, different men before different juries might, under similar cir-

circumstances, meet with very different verdicts.* Every man who strongly believes in the propriety of particular sentiments, will, in expressing his honest opinions, regard opposite sentiments as excessively wrong, and as having a most pernicious tendency. A sincere tory thinks the principles of the whigs tend to render the crown not fit to be worn, and to put the country in imminent hazard of anarchy and confusion. On the other hand, there is no honest whig who does not believe that the principles of the tories, if left entirely to themselves, would annihilate the privileges of the people, and put the government on a level with that of any common arbitrary monarchy. In the opposite speeches of these two great parties, they continually arraign one another as defending principles leading to such conclusions. I hope neither of them will ever have an opportunity of seeing put to the test, unchecked, the principles of their opponents. Perhaps you are neutral between these parties; and I am persuaded, that, at all events, you are possessed of liberal and fair toleration towards persons of a different way of thinking from you on political subjects, and that if their lives give the lie to any idea that they intend mischief, and if they are men generally looked upon as entertaining moderate views—though you think that the practical application of their doctrines would lead to evil consequences, you will give them credit for upright intentions. Fairness and liberality require that trust and confidence should not be withdrawn from others, merely because they entertain different opinions from our own upon these disputable matters, particularly when it is universally known that different opinions are really entertained as to the actual safety of their doctrines. Therefore admitting that a great part of the statement in the speeches would be dangerous, if the authors could convert the great majority of the people to their way of thinking (in which case I should think some of us were in a bad way), God forbid that any other weapons should be used against them, than those of argument and good sense;—God forbid we should think of binding reformers hand and foot, as the means of checking their erroneous doctrines.

Having made these few observations, I shall now more particularly examine the speeches which were made at the Dean Park meeting. And, first of all, I may remark, that the meaning of the passage in which the petitioners speak about the selfishness and aggrandizement of our rulers is sufficiently obvious. The Ministers for the time are quite plainly meant; for what kind of aggrandizement could the King or the Prince Regent look for? The term must mean persons who have something in view before them; and not those who have already attained the heights of sublunary grandeur. Upon this I am sure it is unnecessary to waste another word.

* Vide 2 How. Mod. St. Tr. 214.

The next is the famous passage about bell and allegiance: and I shall not diminish the force of Mr. Clerk's remarks on this subject, by offering many of my own.—But what is the gloss now put on all this? The public prosecutor here sees tremendous sedition, and reads the meaning thus:—"If you, the Prince Regent, will not become a reformer, we shall take up our weaver's-beams, and force you." Now, do the words necessarily bear such an interpretation? I say they do not. I say, not only that they do not bear it necessarily, but that they do not bear it at all, and that the plain meaning of them is quite different. I say that the passage is to this effect: "We, the Weavers of Kilmarnock, want universal suffrage and annual parliaments. We shall lay our petition for these objects at the foot of the throne, where sits our august prince, whose gracious nature will incline his ear to listen to the cries of HIS PEOPLE, which he is bound to do by the laws of the country. But should he be so infatuated as to turn a deaf ear to THEIR just petition, he has forfeited THEIR allegiance." The important words are exactly as I have now cited them,—and their plain, and indeed their only meaning is; that if the sovereign disregards the voice of *his whole people*, he has no right to their allegiance. It is not agreeable to allude to the miserable extremity of an actual difference between the sovereign and his subjects; and no wise or moderate man could contemplate the possibility of such difference, but in the most extreme circumstances. But is there any thing in what I have read, which a court of law could pronounce to be seditious at all? Our duty obliges us, in defending the panels, to take refuge under the argument of an implied contract between the sovereign and the subjects, which may be broken, and of course may be *enforced* upon either side. Now, keeping this principle in view, let us attend to what the petitioners really say.—They say, We the Weavers of Kilmarnock, want universal suffrage and annual parliaments, and will petition the Prince Regent on the subject, who is bound to listen to the cries of his people. What is the meaning of this? Do the "cries of his people" merely mean the cries of the weavers of Kilmarnock? Were these people really so blinded to reason, by hunger and their desperate situation, as to imagine that their voice alone could regulate any measure of public policy? Is there any reasonable ground for alleging that they meant to say, We, the unemployed weavers of Kilmarnock, are disposed to have universal suffrage and annual parliaments; and if you, the Prince Regent, do not give us them, we will rebel against you though nobody else should join us? Is that the feasible sense of the passage? Could these persons, who seem to have had some smattering of reason about them, think that the constitution must be altered, in order to please a few hungry men assembled in a cold day at Kilmarnock? No such thing. The person who uttered these

words plainly meant *all* the people :—he meant, that if the Prince Regent refused *their* just petitions—if he did not listen to the *general* cries of his people, then he had forfeited *their* allegiance, that is, the allegiance of the whole nation, so petitioning, and so repulsed and rejected. It would be too absurd to imagine, that if all the rest of the people in the kingdom were to be true to their allegiance, they, the Kilmarnock petitioners alone, were to rise into rebellion. The words do not bear such an interpretation. The whole people are spoken of.

I do not hesitate to say, that the expression is indecorous, and that it is improper to raise up the idea of resistance on such an occasion. The terms employed were indecent, and perhaps punishable, as a breach of police; but they were not seditious. What was said was, perhaps, harsh and absurd, but it was consistent with the law of the land. For what is the proposition?—That we are entitled to present our petitions to our august prince, and that he is bound to listen to them. I do not know whether the petitioners anticipated the general voice of the people to support their wishes; but in speaking of the Prince Regent, they only say, that his gracious nature will incline his ear to listen to the cries of his people. But, if the Prince Regent is bound by the laws of the country to listen to the cries of his people, *under what sanction* is he bound? There is no doubt, if the people were unanimous in petitioning for any object, government could not be justified in refusing the petitions. The doctrine of the petitioners is consistent, therefore, with the law and constitution of the kingdom. In one sense, the sovereign is but the chief servant of the people, though he is entitled to all respect, to all deference, and to all reverence. The law and the constitution have pronounced that resistance is lawful for the people in certain circumstances; though, undoubtedly, a lamentable struggle might ensue, if such resistance should become necessary.

It is with the utmost pain and reluctance that I enter at all upon such a discussion—having been accustomed to regard this constitutional doctrine with reverence approaching to awe, and being convinced, that in common times it is a doctrine which should be but seldom the subject even of contemplation. But “Fools rush in where angels fear to tread.”—And though some apology, perhaps, may be found for the folly of the petitioners in the extremity of their distress, I am far from denying that it is such as to disgust and offend all persons of good education. The doctrine of resistance belongs to the more sacred and private recesses of the constitution, which are profaned by exposure to the eyes and to the handling of the vulgar. Yet our safety undoubtedly might come to rest on the principle of resistance; and though violence is done to all well-constituted minds, by any light or needless allusion to such a topic, yet when my clients are in danger of punishment, it is my duty to state

that proposition in their defence, and I am sure their lordships will agree in the fitness and propriety of my doing so.—I might cite to you upon this occasion all the authorities that exist upon subjects of this description, and confirm the proposition I have announced by passages from Locke, Hume, Blackstone and Burke, and every writer, indeed, who, in a spirit of unquestioned loyalty, has at all entered into the philosophy of our freedom. But omitting those more general and notorious authorities, I shall content myself with citing to you that of one, not inferior in point of talents to any I have mentioned, and on whom also death has lately set his seal. The person to whom I allude, delivered his sentiments in a scene and situation in which it was his duty to abstain from making such a statement, if his own judgment and good sense had not assured him he was justified in what he said. I allude to a speech in the printed trial of Fyshe Palmer, delivered by lord Meadowbank,* who was then at the bar, and acted as counsel for the crown on that occasion. In commenting on the conduct of the panel, that eminent person took occasion to say, “The only plea that can be set up is the plea of the sword—none else. The time may come when such a spirit may be properly shown, and then I hope there will be spirit and virtue in the country to assert its rights.—The country lately shewed its power to assert its right, not against the executive power, not against the representatives of the people, but against those who were organizing a different representation, those little self-elected parliaments, those self-constituted societies from which a convention was to have been formed. Then there was reason for alarm to the good citizens of the country, and the good citizens came forward, and signified their resolution to abide by the constitution with their lives and fortunes, and to share its fate; and I hope, if our religion, or our civil liberty, is again attacked; if a king or a mob shall dare to persecute us for our freedom, that there will be spirit in this country to assert its right, and maintain our constitution. Such things may be—I can scarcely venture to figure them; yet, kings are but men, and we ought to be thankful for such a king as we have; but if a king were to come who was to send the bishops to the Tower, because they refused to read a prayer or a liturgy disowning the Godhead of Christ,—were the time to come, when men should be punished for refusing to pay taxes, imposed by a king without the consent of parliament—were the time to come, when men were to be tried without form of law, without judges, or juries, but by the arbitrary power of the crown, by their minions and delegates—then would be the time for every man of spirit in the country to assert their rights.”† I read that passage to you, in

* The father of the Lord Advocate who conducted this prosecution.

† Fyshe Palmer's case 2 How. Mod. St. Tr. 288.

order to point out from recent and domestic authority, how clearly the doctrine of resistance is recognised among all who have studied our constitution, and how boldly it is held forth, even by the official advisers of the crown, as the ultimate resource which the constitution affords when an extreme case shall arrive. Now, no more extreme case can be supposed, than that of the prince setting himself in opposition to the voice of his whole people, and that is the only sense which can be put on the passage here in question. Resistance is a lamentable and a dreadful remedy; but it may be a necessary one: and though we ought to take it for granted that the necessity will never occur, we cannot allow its existence or its efficacy to be questioned. It is a true, but awful maxim, and not fit to be canvassed irreverently in conversation, public speeches, or publications. But in defence of my client, I say that it is a true maxim, and that there is neither treason nor sedition in stating it, as is done in this pamphlet.

I shall not fatigue you by going over all the passages which are cited in the indictment, but shall only trouble you with one or two, in order to settle the sense and construction, and determine what was truly and really the scope of the whole discussion on this occasion. You were told that the question lies here (and I agree that it does), Whether, upon the whole, under a pretence of petitioning, it appears there was a purpose in the minds of these people not to obtain redress, but to excite sedition, tumult and confusion from one end of the kingdom to the other. That is the question truly and substantially; and you are not to dwell on detached passages, without taking into view all others of a less ambiguous description:—you are to judge of the import of the whole.

One of the citations in the Indictment is, "That the House of Commons is not really what it is called; it is not a House of Commons. At present we have no representatives." Now this seems to me just such a way of stating the thing, as when a person says, This is no house—this is no dinner—this is no speech, meaning it is not what it ought to be. The mode of expressing the opinion is somewhat strong, but that is its meaning. It is said in the pamphlet, "And a House of Commons, but the latter is corrupted; it is decayed and worn out; it is not really what it is called; it is not a House of Commons." It is then explained, "The House of Commons in its original composition consisted only of Commons chosen annually by the universal suffrage of the people." There is the difference between what it is and what the person speaking conceives it ought to be. When we wish to say a thing is not what it ought to be, we sometimes express our meaning by saying it is not at all; and when a person means to say that the representation of the people is not what it ought to be, he may naturally enough express his meaning by saying that there is no

representation at all. The statement of this very opinion has often been given in this way, and has never been challenged. But it is not on my authority that I wish you to take this explanation. It is given in express terms in the subsequent parts of the very speech from which the expression is quoted.—The orator, after some further dissertation, goes on to say; "Will any man, then, possessed of common sense, say that this is a House of Commons agreeable to our Constitution, or that it is a FAIR representation of the people?" All this, you will observe, is in the same speech, and it must, by every rule of construction, be taken along with what went before to explain and modify those more general expressions.—The same explanation occurs in five other passages of the pamphlet—and leave no room whatever to doubt, that what the orators meant was merely that the House of Commons was not what they wanted, and was not a *fair and equal* representation of the people. Is it sedition to say so? I for one think the present representation a very beneficial one; and though it might be made more agreeable to theory, I should not expect great benefit from some of the changes which have been proposed. But can it be called a fair and equal representation of the people in any sense of the word? There is hardly any person in Kilmarnock who possesses a vote.—I do not say there is any disadvantage attending the present representation, but other persons may think differently; and sure I am there are plausible grounds for any one saying, he would like to see the representation reduced nearer to the theory of the Constitution. Upon system and principle the representation ought to be altered in some particulars, though, upon the whole, I do not expect the mighty effects from any alteration which some people do. The passage in question is a short, rhetorical, pithy, forcible way of expressing the speaker's opinion; but he obviously means that the representation is unequal, that it is not sufficient, and not agreeable to the theory of the Constitution. That a man should be prosecuted for sedition for appealing upon such a point to the authority of Parliament was never heard of before. But it has been the fate of the panels to be accused of arraiguing the Constitution, while contending, as they thought, for its restoration to purity and vigour.

I now turn to the definition of sedition in our law books. To commit sedition, you must, in direct terms, or by unequivocal insinuations, excite discontent and disturbance against the present state and constituted authorities of the country. Mr. Hume, who is not supposed to have looked upon sedition with any extraordinary lenity, expresses himself thus: "It reaches all those practices, whether by deed, word, or writing, or of whatsoever kind, which are suited and intended to disturb the tranquillity of the State;—for the purpose of producing public trouble or commotion, and moving his Ma-

Majesty's subjects to the dislike, resistance or subversion of the established Government and laws, or settled frame and order of things."

Then see by what instances and examples he illustrates and explains his definition.—In every one, you will observe, he makes it an indispensable qualification that there should be some direct exhortation to the people to usurp an illegal power.

Mr. Hume is looked upon as a great advocate for the crown in his observations on sedition. The times in which he wrote his account of the law on this subject are supposed to have given a bias to his opinions, of which he was probably insensible. There is a prevailing opinion at least to this effect, in the other end of the island especially,—unfounded in all probability, but certainly very generally diffused. This, I say, is a common opinion concerning his treatise; and certainly his argument against sedition is carried as far as it can go. His book was published recently after the circumstances of the country required a more than usually vigorous application of the sedition laws; and this accident may have warped his opinion on the subject. Yet, strictly and vigorously as it may be thought he lays down the law, it will be found that even his grasping and comprehensive description does not include the case of the panels, but that every one of his examples implies that there has been a direct excitement of the people, to take to themselves some part of that power which belongs to other hands. But in the present case there are no words which shew an idea to have been entertained of usurping such a power. I say none of the passages can be founded upon as indicating such a purpose. There are words, indeed, which expressly contradict the idea of any such purpose. In the speech of Mr. Johnstone, page 14 of the pamphlet, he says, after enumerating our grievances in glowing terms, "But what are we to do, my friends; what does the constitution authorise us to do?" Now this is coming to the point with sufficient directness; but let us see how it is settled. The orator answers himself thus, "It gives us a right to lay complaints before the King and both Houses of Parliament, and a right to be heard and relieved when we suffer. Let us this day embrace the privileges of our glorious Constitution; let us lay our petitions before them, and assert our rights as men and as Britons." Is there any thing equivalent to sedition here.

I might put the matter also to the test of what the petitioners did. Did they organise any societies to correspond with? Did they affiliate themselves as the United Irishmen did? Did they declare their committees permanent, or provide in any way for their future proceedings? In short what did they do? They did just what they professed to do,—they petitioned Parliament, and having sent off their petitions, went home quietly to their families. No meeting has ever been heard of

at Kilmarnock since the evacuation was made in Dean Park; and if that is the way in which the people are to alleviate their distresses, it is at least as innocent as running up scores at the gin-shop. But we must go back to our orator. He proceeds, "Let us, therefore, use every constitutional means to recover our lost rights, rights which our ancestors enjoyed and exercised; let us be firm and unanimous in our resolves, that we will not be deprived of our privileges any longer, that we claim them as our birthright, and by our quiet and constitutional conduct shew our enemies that we hate anarchy, confusion, and usurpation, and that we want nothing but what is for the general good of the country." But these, it has been said, are pretences, put on to disguise the real wickedness of their designs. I think you are in no danger, Gentlemen, of believing that. Whatever faults these people may have committed, I am confident you will not find them guilty of hypocrisy. My own conviction is, that they have spoken more violently than they intended; but I am sure you will give them credit at least for all the moderation they profess.

There is a great deal more to be said on the other parts of this publication. Mr. Craig makes an eloquent harangue. There is a great deal of poetry in his speech. "Being then, my brethren, impelled by necessity, let us approach, displaying reason and resolutions like men who know their duty and their object. Yea, with these and similar principles may we undauntedly go forward, and like legitimate sons come to the years of majority, let us in the name of law and justice demand the inestimable and dearly purchased bequest of our worthy progenitors, that we may enjoy it ourselves, and transmit it to a lauding posterity. And so act, awaiting the fiat of Him who regardeth not the persons of men, but attendeth to the cries of the poor, and pleaderth the cause of the distressed; always taking for our encouragement the success of the unfortunate *Widow* recorded for our instruction, who by her incessant demands prevailed with the unjust judge, that although, without any regard to his high obligations, yet was not totally destitute of that principle which makes all human kind quake, when reminded of neglected duty. May we be actuated by the same courage to go and do likewise." Here, again, you see how distinctly their views were limited to the peaceful iteration of petitions.

The purpose of the Resolutions, too, has been entirely misunderstood. In the 5th it is said, "That the debt, now amounting to nearly 1,000 millions, has been contracted in the prosecution of unjust and unnecessary wars, by a corrupt administration, uniformly supported by a House of Commons, which cannot be said, with any justice, to be a fair and equal representation of the country, but which for the most part is composed of men put in by a borough faction, who have usurped the rights of the people; and who by undue means have

contrived to return a majority of members of that House." The facts here stated are trite and stale, but the passage is worth noting, as affording, and that in the most authoritative and *only deliberate* part of the publication, the most clear and complete evidence of what they meant when they used expressions vituperative of the present House of Commons.

The 9th Resolution is, "Being, therefore, impressed with the truth of these Resolutions, the meeting resolve to present petitions to his Royal Highness the Prince Regent, and to both Houses of Parliament, requesting his Royal Highness in particular, to *assemble Parliament* without delay; to call upon it immediately to adopt such measures as may tend to restore to the people their undoubted right in the representation,—to order, in the name of the people, an immediate reduction of the taxes and the standing army, the abolition of all unmerited pensions, sinecures, grants, and other emoluments, as the surest way of establishing on a firm and lasting basis the rights of the crown, and the privileges of the people; and that in all time coming, no person who has an office, or place of profit under the King, or receives a pension from the Crown, shall be capable of serving as a member of the House of Commons. 12. Wm. III. c. 2." It is quite plain from the context, that it is *the whole Parliament*, and not the Prince, that is called upon to order an immediate reduction of the taxes, the standing army, and so forth;—so that the eloquent exposition of the lord advocate upon this passage was founded upon a manifest misconception of its meaning.

I have only to call your attention to the next resolution, which clearly shows the scope and extent of their views and threatenings, "And the meeting hereby resolve to make known to his Royal Highness the Prince Regent, and to both Houses of Parliament, that *they will not cease sending up one petition after another, and using every constitutional measure* insured to them by the laws of the country till they obtain the restoration of their rights and privileges as men and as citizens of the state." This is the only *practical* resolution they came to; and even this was not acted upon, for it appears that no other meetings have been held, or petitions transmitted from that time to this. In the same way the meaning of the words, "Shall we bear this," or similar terms, is, throughout explained in the clearest and most precise way to be, Shall we bear our sufferings without complaint, without murmuring, without stating our grievances by application to the proper quarter? "So far from ceasing to complain," they say "the clamour of our cries for redress shall never cease to ring in their ears, till the abhorrent temple of corruption be annihilated, and the banners of freedom wave from the heights of Dover to the mountains of the North." That is a lofty passage, and full of eloquence certainly. But in every one of the speeches, in which it is anxiously stated, not only that there are grievances, but griev-

ances which could not be borne, what do they propose to do? Do they propose to attack the throne? No; they merely say, We shall apply, like the importunate widow, and reiterate our clamour till we weary you, or by the force of our reasoning, prevail over your prejudices.

There was one part of my learned friend the lord advocate's speech, of which I am really unwilling to say exactly what I think, or express the feelings it excited. I mean the passage regarding the army, when he spoke as if there had been a disposition entertained by some of those at the meeting to induce the army to rebel against the government. The only libel I have heard to-day is the supposing, for a moment, that such an intention could be entertained, and with any the slightest hope of success. The policy of keeping up a standing army was long the subject of discussion in parliament, and the danger of it to the constitution was much insisted on, while, latterly, such a danger has been less apprehended, and the great consideration in questions regarding the army has been the expense which it necessarily imposes on the country. But whatever opinion may be entertained on this subject, there was no discussion at this meeting on the expediency of a standing army; and the passage in question is most manifestly intended merely to meet this common and almost obsolete Whig topic, and to show that it was not from that quarter that danger was to be apprehended. I say that this was obviously its meaning, if indeed it is not rather to be regarded as a piece of mere declamation upon a very popular and inviting theme. Nobody at present thinks ill of the army: on the contrary, it is scarcely possible to speak on any public subject, without taking an opportunity of saying something in the praise of the army; and to endeavour at a piece of eloquence in its favour is the ordinary style of writers of all descriptions. The hope of seducing it from its duty and allegiance, if it were not too wicked, is far too absurd to be entertained even by the most desperate conspirators.

In another speech it is said, "It is high time, when they have robbed us of our money, deprived us of our friends, violated our rights, and abused our privileges,"—it is high time for what? to take up arms and overthrow the government? no such matter—only "*To demand redress for such treatment.*" The orator then goes on, "But, methinks I hear them say, we are determined to give no redress, we have huddled ourselves into places, pensions and sinecures, and we are determined to hold them. This I think is their language." Well, well, what then? In this desperate case, proceeds this seditious orator, "We must seek redress from another quarter; *we must petition his royal highness the Prince Regent* to remove our grievances! to give us a parliament of our annual choosing, which will represent us in a form agreeable to our wishes, and agreeable

to the constitution." Is it said that this is hardly a cover for professed rebellion? In answer, here is another passage, "The unanimity of our sentiments and exertions, agreeable to the constitution, will once more dispel the cloud which eclipses the resplendent and animating rays of liberty, and will again make her shine forth in this once happy country with unimpeded effulgence." The last speech in the pamphlet ends thus: "Permit me now to conclude in the inimitable language of our celebrated bard, and friend of liberty, Robert Burns—May tyranny in the ruler, and licentiousness in the people, find in each of us here an inexorable foe."

There is another passage where allusion is made to reverend hirelings, upon which the lord advocate bestowed his eloquence as needlessly, and, I am sure, with as little effect as on the passage about the army. In that quarter of the country, a tendency to fanaticism rather than to irreligion might be expected; as it was there that presbyterianism first struck root: and in this very pamphlet you will find passages similar to those employed by the Covenanters in the Tales of my Landlord. "It is there you will see how Egypt flourished under the wise administration of Joseph;—and what the heard-hearted and inquisitorial Pharaoh did for the sons of the Nile;—it is there you will see what Solomon did for Israel;—with what Jeroboam, Nebat's wicked son, and others, brought upon the (now) wandering sons of Jacob. It is there you will see what Nebuchadnezzar, Evil-Merodach, and Belshazzar, did for the now extinct Babylonians;—how Persia rose under Cyrus, and sunk under the bloody Cambyzes," &c. &c. I am confident, indeed, that you cannot look into any part of the publication, without seeing great reverence for scripture,—a calm, temperate reliance on the assistance of Providence in all good acts,—a reliance to be founded on good moral conduct and prayer. The term, "reverend hirelings," employed by these rude orators, might be considered perhaps as not undeserved by certain clergymen who leave their proper duty for making proselytes in politics; and persons who do not agree with them might say, with any purpose but an intention to bring discredit on religion, that they had been hirelings in certain parts of their conduct. Nothing is more innocent. The attack might perhaps have been made in a more decorous manner, but surely there is no pretence for saying here, that there is any design to excite a spirit of irreligion.

I have now gone through the publication; and I leave it to you to determine on its nature,—only reminding you that it is a fundamental rule of law, that a seditious intention is necessary to constitute sedition. You will therefore consider, whether the object of these people was merely to petition parliament, or whether, under the false and assumed pretext of petitioning, their object was to excite sedition among the people, and to spread mischief

and disturbance in the country. In judging of this you will remember what you heard in evidence as to Mr. Baird, of whom you were told that he would be the last man to join in any treasonable or seditious enterprises, and that he was accustomed at all times to check the folly and infatuation of his neighbours.

I have already detained you, I am afraid, unreasonably long, but I cannot leave the subject without taking some notice of the precedents respecting trials and convictions for sedition which have taken place in this Court. They are all of very recent date, having occurred within the memory of most of us; I believe there was no trial for sedition earlier than the year 1792. There are, indeed, some ancient cases thinly scattered in the records of the Court, but in all these the crime was accompanied with other offences, by which the sedition was aggravated. There is no case of mere sedition, earlier than the date I have mentioned. That date must strike you at once as affecting the character of all those precedents. For it is never to be forgotten, that they, one and all, took place at a time, when the minds of Juries, and of Courts, and indeed of all persons in the country, were in a state of unprecedented alarm for the safety of the constitution; at a time when acts and expressions, which undoubtedly would not have been taken cognizance of, in happier and more serene seasons, were considered as of the most dangerous tendency;—at a time when this country had recently engaged in an alarming war with a powerful enemy,—a war, not arising from disputes about territory or points of national honour, but which, proceeding from enthusiasm and madness on the one hand, and undefined fear and resentment on the other, arrayed every individual in both countries in personal hostility against every other:—a war, indeed, proclaimed against all established governments, by a country whose whole interior exhibited a phasis of confusion and crime, and breathed forth a pestilential air, which threatened to spread the contamination through all the neighbouring regions. We fought not, as in former wars, with men formidable only by their numbers, their skill, or their courage, but with men whom we imagined to be armed with a deadly poison, and zealous to spread contagion wherever they went. In these times, not only was there a raging war with that nation, which was loudly threatening an invasion of our shores,—but it is impossible to deny that there was an established centre of rebellion at home, looking up to France as the great redresser of wrongs, asking its assistance to rear up every where, the cottage on the ruins of the palace, and to carry into execution the most visionary and absurd plans for the regeneration of society. Communications of a most dangerous nature were passing between the two countries, and the crisis seemed as imminent as any the world ever saw. Such was the distressing condition of this country; that it was impossible to remit

for an instant, the most watchful police over the conduct of the disaffected. And what was actually their conduct in that season of general alarm? Why, they were found in innumerable multitudes holding meetings throughout the whole land,—not going out one day under a feeling of distress to petition the legislature,—but forming themselves into permanent and affiliated societies, corresponding with one another throughout the whole kingdom, and with societies abroad, and smitten to such a degree with an ambition to imitate every thing in France, as to adopt French names and forms in their associations. In short, an organised system of disaffection was formed, calculated to strengthen the hands of the enemy, and to unite all the domestic desperadoes that could be mustered against our own established government. Such was the condition of the country when the trials for sedition were first brought on. In the course of ten months, societies had been established, not only in every considerable town in Great Britain, but in every little village, which, as branches of the general society, appointed delegates to it. I think I am not exaggerating the condition of the country at that time, with a view to suggest, nor do I give this as an apology for some of the proceedings which then took place; but I state it as it really was, that you may know the true character of those proceedings.

The first trial was that of Mr. Muir.* It is with pain I recollect that case. With all due respect to the Court and the jury that tried it, I cannot think it a precedent to be commended. I cannot but consider it as an occurrence to be lamented—since unfortunately it cannot be forgotten. Yet, in that case there were many circumstances of aggravation, of which there is no shadow to be found here. Mr. Muir was a member of the society of the Friends of the People in Kirkintilloch and in Glasgow. He had gone to France, where he remained till after the war was declared. He came back to Ireland, and assisted at several meetings of the United Irishmen, and then returned to this country, when he was arrested and brought to trial. The charges against him were relevant. He was accused of having excited the people to disaffection to the king and the established government: he was accused of having industriously circulated the work entitled the Rights of Man, and other publications of a pernicious and seditious description. I am old enough to have attended the trial; I was not then at the bar, but I perfectly remember the leading features of the case. I think the evidence was scanty; but still the charge was relevant; and if the proof had been satisfactory he was guilty of sedition, and therefore liable to punishment. At that time there was a combination which seemed pregnant with danger to all existing establishments,—a combination formed by societies all over the country, who appointed deputies to a

general meeting. The circulation of such works as Paine's Rights of Man was at that period likely to produce much evil. I believe, however, that feelings of compassion for Mr. Muir were general. I hope they are perfectly consistent with utter detestation of sedition. I believe sentiments of regret for the necessity which led to his prosecution and conviction were universal; and I say, with all due submission to the law and the verdict of the jury, that very many loyal subjects thought there was room for a verdict of acquittal—that the bulk of the nation regarded the sentence as unnecessarily severe.

The next case was that of Fyfe Palmer.† He was also connected with the Friends of Freedom, and had circulated a political handbill in Dundee and in Edinburgh addressed to the lowest people. Hundreds and hundreds of these, addressed to all and sundry, had been by him committed to the winds of heaven; and surely to sow such doctrines broadcast in this reckless way, without pretence of any special end, was criminal and punishable. The handbill contained much inflammatory matter, and was proved to have been circulated by him. It was addressed to all and sundry, and at a time when the minds of the people were in a dangerous state of irritation. No direct remedy was proposed for any of the evils complained of, and the only object in view seemed to be a dangerous usurpation of power. I say there was real sedition in that case, and that it had no resemblance to the present, where there was merely one meeting, and one set of speeches, for the special object of preparing a petition to parliament—with the preparation of which the whole business actually closed.

The next and the only other cases were those of the members of the British Convention; Skirving,‡ Margatot,§ Gerrald,¶ and others; and certainly the existence of that extraordinary association gave a peculiar character to the whole of these cases. That formidable body, you may remember, was composed of a set of persons acting as delegates from the remotest parts of Great Britain, and who had no lawful business in this place, and no other visible purpose than to excite disaffection—who had no such thing in view as petitioning the legislature, but who wished to organise a power independent of it, unknown to the constitution, and incompatible with the existence of its great institutions. They had private meetings, and committees of emergency, some of which were only to act in the event of an invasion by a hostile force. Even taking the statement which was made by those persons in their own defence, and looking to the situation of the times abroad and at home, it is impossible to doubt that it was necessary to put down the Convention, and to inflict pe-

* 2 How. Mod. St. Tr. 117.

• 2 How. Mod. St. Tr. 237.

† 2 How. Mod. St. Tr. 391.

‡ 2 How. Mod. St. Tr. 603.

§ 2 How. Mod. St. Tr. 803.

ishment on such as Skirving. I need go no further into details, but shall merely mention that there was real, actual, and palpable sedition in that case. My purpose, in alluding to them, is to contrast them with the present case; for even in those times, and under all the deplorable circumstances which I have mentioned, this case would have been viewed very differently from the cases then tried.

The trial of Robertson and Berry* took place at a time far more critical than the present. They were tried for printing and publishing a book entitled *The Political Progress of Scotland*, which, as to hurtful tendency, went far beyond the pamphlet now in question. Such and such taxes were said to have been illegally imposed, and the constitution held out as a mere conspiracy of the rich against the poor; yet the punishment inflicted was three months' imprisonment to one of them, and six months to the other. There were worse cases in 1793. In one, I mean that of Marten and Anderson,† it was proved that persons who were members of the society of the Friends of the People had gone into the castle—insisted that several of the soldiers should join the society—and given as a toast, George the third and last, and damnation to all crowned heads; yet, upon a clear verdict of conviction, nine months' imprisonment, only, was inflicted. Two cases occurred in 1802. In one of them, under very gross circumstances, for the man was a soldier, and had said he was sorry the king was not shot, and that he could see his heart's blood on his bayonet, the punishment inflicted was one month's imprisonment, and banishment from Scotland for two years. The other was the case of one Jeffrey (I am sorry that should have been the name), who, for wishing destruction to king, queen, and royal family, suffered three months' imprisonment.

I have quoted these cases to show, that even in times when great rigour was necessary, cases much worse than the present were leniently viewed; and I say, considering that we stand now in very different times, and that the people at Kilmarnock had confessedly no intention of holding conventions composed of delegates from various quarters, or of propagating sedition in any way, but were hungry artisans, who only met on one occasion to petition for something, they knew not what, which they thought would afford them relief, and never harboured any purpose of exciting or rising in rebellion, but continued to prosecute their views by constitutional means; can you conceive, that if the more serious cases which I have been considering received such slight notice, the present case would, even then, have been thought worthy of any punishment at all, or that any thing further should now be done, than sending the panels home a little admonished, and heartily frightened, to be more cautious on any future occasion?

In urging this to you, I think I may refer to an authority which cannot be either despised or avoided—I mean the authority of the whole kingdom, of the whole law, of the whole majesty and power of the king, ministers, judges, and legislature of England—of that country which has had the longest experience of freedom, and has learned most thoroughly by that happy experience how little real danger there is in the discontents, or even the occasional violence of a free people. There, it would appear, they are not so easily alarmed—not so easily frightened at words, or so apt to suppose that the constitution can be brought into hazard by a few intemperate expressions. I quote, therefore, the example of England as it stands at this present moment. Will any one say, that what passed at Kilmarnock will bear any comparison, in point of indecency and indecorum, to what is notoriously passing in England every hour, and under the immediate observation of the judges and of parliament. The orations of Hunt—the publications of Cobbett and others—the meetings in Spa-fields and Palace-yard, are all, up to this hour, unchecked and unpunished—and are met only by ridicule and precaution. In the Royal Exchange, at the doors of the houses of parliament, at the gates of the palace, publications are openly sold—not 400 copies of dull speeches, but hundreds of thousands of daily and weekly effusions, containing, every one of them, matter far worse than what is found in this publication. I am sure no one can look into them, without being satisfied that they contain strong excitements to discontent, and that their authors are continually working upon the feelings of the country; yet they are still holding forth their doctrines without danger of interference.

See, then, what is the course, that all the wisdom in council, and policy of government, in that land of freedom have held? What is the course they have pursued with regard to that portion of the people with whom originated any disorder that exists in the country, and the people to whom indeed the disorders are still confined? Notwithstanding the situation of England for the last six months, this is *the first* and the only trial which the present disturbed state of the country has produced. Really, I should not have expected to find the first trial in this country. They that are whole need not a physician. There has been breaking of frames in many counties in England for eighteen months; and yet his majesty's government have a merciful reluctance, and are slow to call the people to account even for those great excesses while there is any reason to think that they have been produced chiefly by their misery. And with regard to the political commotions in the metropolis, they know that a check to the spirit of freedom ought not to be given without necessity;—that the present tumults have not arisen so much from wickedness of heart, as from the pressure of misery;—and with a paternal solicitude, they look watchfully

* 2 How. Mod. St. Tr. 84.

† 2 How. Mod. St. Tr. 7.

and compassionately upon the people as if they were in the delirium of a fever;—and they spare them as deluded and mistaken only for a season. That is the tone and temper in which the equal justice of England is dealt, and sure I am it is admirable, when compared with that which would lay every newspaper open to prosecution, and stifle the voice of freedom. Nothing but extreme necessity and immediate danger can justify the rearing up state prosecutions. According to the example of England, we should be slow to punish the people. In England, much more has taken place to justify prosecutions than has yet occurred in Scotland. Looking at home where no riots, and no rebellion exist, and where a great mass of misery has been more quietly and more soberly borne than in the sister kingdom, we should not be rash or hasty to stretch out the hand of vengeance against those whose case calls rather for compassion than punishment. Believe me, gentlemen, it will be no honour, and no glory to us, to set the example of severity on such an occasion; nor will it redound in any way to the credit of our law or our juries, that we were more sharp-sighted and jealous than our neighbours in weighing the rash words of our fellow citizens, at a time when they were suffering the extremity of distress. At such a season, expressions will be used which it is impossible to justify; and offences will be committed, which will again disappear in seasons of prosperity. A vigilant police, in such a case, is all that is wanted. Absurd and improper expressions at meetings for petitioning parliament hardly deserve notice; and a facility of obtaining convictions for government on trials for such offences is universally recognised as a mark of public servility and degradation. It is always most easy for the worst governments to obtain such convictions,—and from the basest people. Affection to the constitution is planted substantially in the hearts of the subjects of Great Britain; and it is only those governments which are doubtful of their own popularity, that are given to torture and catch at words, and to aggravate slips of temper or of tongues into the crimes of sedition and treason. If, on account of some rash or careless expression at public meetings, people are to be punished as guilty of sedition, there is an end to all freedom in examining the measures of government. The public expectation is alive to the result of the first of these trials; and I say it will be no honour, and no glory to you, in such a case, to set the first example of finding a verdict which would subject people to punishment in the circumstances of these panels. Even if you think that the crime is doubtful, I trust you will not be disposed to lend yourselves to the over-zeal of his majesty's professional advisers in this part of the kingdom. I say, I trust you will not shew a disposition to follow, where the keen and jealous eyes of persons in authority may spy out matters of offence; and that Scotsmen will not be forward to construe into guilt those excesses of speech into which they know that the *fervid*

genius of their countrymen is so apt to hurry them,—especially when they find that far worse excesses are pardoned in England to the phlegmatic English,—in whom they have far less apology.

I have exhausted you and myself,—but I have one word more to say. This is a case above all other cases fit for the decision of a jury,—a case in which you can expect but little assistance from the Court, and in which, I will venture to say, you ought to receive no impression from that quarter, but judge and determine for yourselves. The great use of a jury is, not to determine questions of evidence, and to weigh opposite probabilities in a complicated proof. Its high and its main use is, to enter into the feelings of the party accused, and instead of entertaining the stern notions of fixed and inflexible duty which must adhere to the minds of judges who administer inflexible law, to be moved by the particular circumstances of every particular case—to be touched with a nearer sense of human infirmities, and to temper and soften the law itself in its application to individuals. It is on this account alone, I believe, that in foreign lands the privilege of jury-trial as existing in this country is regarded as so valuable. And certainly its value has always been held chiefly apparent in trials for alleged political offences,—with regard to which it is the presumption of the law itself, that judges might be apt to identify themselves with the crown, as they belong to the aristocratical part of society, and to those great establishments which appear to be peculiarly threatened when sedition and public disturbance are excited. Whether there is any reason for this distrust is not now the question; and in this Court I am perfectly assured that we have no reason whatever, to doubt the impartiality of the Bench. But it is not to them that the country looks,—that all Britons, and all Foreigners look, in questions with the crown, when as head of the state, it demands punishment on any of its subjects for alleged want of obedience.—In all such cases, the friends of liberty and justice look with pride and with confidence to the right that a man has to be tried by his peers.

If this question, then, is left to you, and to you only, I am sure you will not easily take it for granted that the panels at the bar were actuated by seditious motives. You will judge, whether in the publication of this foolish, intemperate and absurd book, there was an intention to excite disorder and commotion in the country, and that in this conduct my client was blind to his own interest, and to the evil consequences to his country. The essence of the crime, I can never too often repeat, consists in *the intention*; and in judging of this you will take *all* the circumstances and *all* the acts of the parties into your view. In a season of great distress, one single meeting was held for petitioning the Legislature,—a purpose which redeems every thing that might have been amiss in their proceedings. Nothing but a petition to Parliament was, in fact,

the result of the meeting,—and 400 copies only of these foolish speeches were printed. No steps were taken to promote disorder, but the most entire tranquillity then and afterwards prevailed.

When I think of these things, I can have no doubt at all of the issue of this trial. You cannot but perceive that the panels have not been proved guilty of sedition; for they have not been proved to have said or done any thing *wickedly and feloniously, or for the purpose of exciting tumult and disorder in the country.* Their general conduct and character render such an imputation in the highest degree improbable; and the particular facts which have been proved are so far from supporting it, that, when taken all together, they are obviously inconsistent with its truth.

SUMMING-UP.

Lord Justice Clerk.—Gentlemen of the Jury; Although you have heard from the learned Counsel who has just now addressed you, with infinite ability, on the part of one of the panels, that this is a case more fitted for the particular consideration and final decision of a Jury than of the Court, and that here the Court has less concern, and less to do, than in any other species of trial; I am much afraid that, in the view which I entertain of the duty incumbent on me on this occasion, I shall be under the indispensable necessity of still detaining you for some portion of time, notwithstanding the fatiguing duty you have had to perform.

In consequence of the alteration of the law relative to proceedings in this Court, it is no longer necessary to take down the evidence in writing,* but it is still the duty of the presiding Judge to sum up that evidence to the Jury who are to decide upon it; and notwithstanding what the learned gentleman said, (and I am not disposed to find fault with his remark), I shall state for your consideration, the nature of the charge and the evidence exhibited against the prisoners at the bar. But even if I were not enjoined by the positive authority of statute to do so, I should not have hesitated, in such a case as the present, to state to you my view of the evidence and of the law applicable to it. It is your province, indeed, to judge of the whole of the case; but sitting here as a guardian of the rights and privileges of the people, and bound as I am to administer the law according to the best of my judgment, I have to state to you, clearly and distinctly, my view of the law of this case, and then to leave it to you to do your duty, as I shall now endeavour to do mine.

The Indictment exhibited against the prisoners at the bar, contains in the major proposition, a general charge of sedition, and in the minor you have the narrative of the fact,

in reference to which the public prosecutor subsumes, that they are both, or one or other of them, guilty of the crime of sedition, actors or actor, or art and part.

You will have observed, that the evidence which has been laid before you is of a different nature as it affects the different prisoners. One of them is charged with having delivered, at a meeting held in the neighbourhood of the town of Kilmarnock, a speech, which the public prosecutor states to have been of a seditious nature, containing a number of inflammatory remarks and assertions, calculated to degrade and bring into contempt the Government and Legislature, and to withdraw therefrom the confidence and affections of the people, and fill the realm with trouble and dissension; the manuscript of which speech he is charged with having afterwards delivered to a printer, for the purpose of its being printed. And with regard to the other prisoner, it is stated, that he prepared for the press an account of the proceedings at the meeting, which account contains the speech above referred to, and others also alleged to be of a seditious and inflammatory nature, and that he assisted afterwards in its circulation, by exposing and actually selling it in his own shop.

It will be necessary for you first to consider what is the evidence of the facts as it applies to both and each of these prisoners. After calling your attention to the facts, I shall make some observations on the law of the case; and I shall then desire you, upon these facts and that law, to consider whether there is ground for the conclusion of the public prosecutor.

It may save you trouble, to state to you at the beginning the definition of the crime of sedition, as given to us by an authority, which is one of the most respectable with regard to the law, that can exist in any country whatever. I do not know that there is any foundation, in point of fact, for the supposition which was mentioned, that the author I allude to had ever been suspected of having any particular bias in giving a view of this department of the law. I never before heard that such a notion existed in the minds of the people. But sure I am, if they who read his book look to the authorities and decisions to which he refers, they will be most decidedly of opinion, that he has expounded the law in the most clear, able, and satisfactory manner. Mr. Hume, the author to whom I allude, gives this general description of the crime of sedition*: "I had formerly, in drawing the line between sedition and leasing-making, a proper occasion to explain the general notion of this offence, and I shall not now attempt any further to describe it (being of so various and comprehensive a nature), than by saying that it reaches all those practices, whether by deed, word, or writing, or of whatsoever kind, which

* *Vide* stat. 23 Geo. III. c. 45, made perpetual by stat. 27 Geo. III. c. 18.

* Vol. ii. p. 484.

are suited and intended to disturb the tranquillity of the state, for the purpose of producing public trouble or commotion, and moving his Majesty's subjects to the dislike, resistance, or subversion of the established government and laws, or settled frame and order of things.

“Under this description would fall a work (such as it has been reserved for the wickedness of the present age to produce), which should teach that all monarchy and hereditary rank, or all clerical dignities and establishments of religion, are an abuse and usurpation, contrary to reason and justice, and unfit to be any longer suffered or continued. Or, though the piece should not set out upon so broad a principle as this, if it argue (in common with the many compositions which have lately been pressed upon the world) that the power of the king is overgrown, and ought, at any hazard, to be retrenched; or that the Commons are a mere nominal and pretended representative of the people, whose laws are entitled to no manner of regard; or that the whole state is full of corruption, and that the people ought to take the office of reforming it upon themselves. All exhortations of this kind, whether any commotion follow on them or not (for if any do follow, then it will depend on the degree, fashion, and immediate occasion of that disturbance, whether it is not treason in those who partake of it), are undoubted acts of sedition, being calculated and employed for the direct purpose of loosening the hold which the Government has of the opinions and affections of the people, and thus preparing them for acts of resistance or aggression.”

“Several of the instances which he gives of this crime were already read to you, and I need not repeat them. But I refer to another passage further on, in which the author confirms and illustrates his opinion. “The reason in all these cases is the same. The crime of sedition, therefore, lies in the stirring of such humours as naturally tend to change and commotion in the state. So near, indeed, is the alliance between sedition and treason, that if, instead of sowing the seeds of a hostile disposition to the Government, or preparing such materials as in time may kindle into a flame, the offender shall seek the same object more immediately, by a direct and definite exhortation to the people to rise at that particular season and conjuncture, as advantageous for gaining their ends; this measure in like manner, as a consultation to levy war, seems to be nothing less than an act for compassing the death of the king, being a decided and material step towards the doing of that which cannot be done without the plain danger of the Sovereign's life.”

“Again, in speaking of a distinction which has to-day been glanced at, between verbal and real sedition, Mr. Hume expresses himself in these words†: “If all that can be said of the

composition is, generally, that it is of an inflammatory kind; such as by the principles it inculcates, and the obloquy it throws out on the management of public affairs, tends to the infusion of jealousy and discontent among the multitude; but without proceeding to any proposal of a plan, or set of active operations, as grounded upon these principles, and fit to be followed in the existing state of things; this may with propriety be referred to the head of verbal sedition. It was for a composition of this character that Robertson and Berry* were convicted, as has been mentioned; and William Stewart† was outlawed upon a charge of the like nature, on the 11th March, 1793.” So that you see it most distinctly stated, that words, if of an inflammatory nature, though not followed by active operations, will amount to verbal sedition.

I shall content myself with reading to you one other passage, without offering a word of my own upon the subject. This passage refers to the distinction between the crime of sedition and that of leasing-making, which is still recognized in our law. “But sedition is a crime of a far wider and more various description, as well as of a deeper character, which may equally be committed in relation to any of the other powers, orders, or parts of the public constitution of the land, or to any class or division of the society of its inhabitants, and without the use of special calumnies or slanders against the king, or any other individual; as by the forming of combinations, the taking of resolutions, the circulation of doctrines and opinions, or, in general, the pursuit of any course of measures and actions, such as directly tends to resistance of the legislature or established government, or to the new-modelling of the state without the authority of law. No invective, therefore, how violent soever, against monarchy in general,—no abuse, the most outrageous, of the British constitution,—no proceedings, though ever so plainly tending to abolish that venerable system, and set up a new form of government in its room, would justify a charge of leasing-making. Because, though all involving the state and office of the king as part of the constitution, such projects are levelled against the whole system, and are not moved out of special grudge to the prince upon the throne, but spring from a deeper and more malignant principle, as well as employ more direct and more extensive means than that of mere slander of the person and conduct of the king. Thus sedition is a proper crime against the state, and holds the next place after treason, to which it is nearly allied, and which it may often but by a short interval, precede. The other is a personal offence, or verbal injury, offered to the king and which the law considers in so much a more serious light than other injuries of that class, partly by reason of the just regard it has

* 2 How. Mod. St. Tr. 79.

† 2 How. Mod. St. Tr. 25.

to the peace and tranquillity of the head of the state, the most eminent person in the land; and partly by reason of the possible evil influence of such an example on the affections and dispositions of his subjects."

Having thus explained, from what I certainly take to be undoubted authority, what constitutes sedition, I have to state to you what is equally clear in point of law, and what it is of essential importance you should keep in view, and upon which both sides of the bar are agreed,—that it must be held as the fundamental rule of your conduct in deciding this case, that by the law of Scotland your duty is not limited to a consideration of the facts merely, but that it is your province to take into view the nature of the speeches and writing complained of, as well as the fact of publishing; and I state to you in the words used by a distinguished judge in a former case of sedition, though not exactly parallel to the present, that it is not only your right and privilege, but your unquestionable duty, to say whether sedition has been committed or not.*

Having paved the way to the consideration of the question before us, we are first to consider what is the evidence which the prosecutor has adduced as to M'Laren having delivered a speech containing passages such as those set forth in the indictment. You will recollect that you had brought before you Mr. Andrew Finnie, a witness on the part of the crown, but who, in reference to the whole of the transactions under consideration, was himself, to a certain extent, a party concerned. He was a member of the committee that prepared matters for the meeting, was himself present at the meeting, and was afterwards selected to take a lead in the subsequent proceedings. You are to judge of his evidence, which he appeared to give in a fair, open, and candid manner. I see no objection to the weight of his evidence. He says, that he is not able to speak distinctly as to the whole of M'Laren's speech, but that to the latter part of it he did pay particular attention. He swore that he heard him deliver these words: "We will lay," or "let us lay, our petitions at the foot of the throne, where sits our august prince, whose generous nature will incline his ear to the cries of his people, which he is bound to do by the constitutional laws of his country; and we are thereby bound to give him our allegiance: but if he should be so infatuated as to turn a deaf ear to the general cries," or, "voice of his people, to hell with our allegiance." This is the whole of the passage as far as the witness recollects. It was at the close of the speech these words were used. He states, that the words, "And we are thereby bound to give him our allegiance; but if he should be so infatuated as to turn a deaf ear to the general cries" or "voice of his people," and not "just petition," being the words subsequently cited in the indictment,

preceded these words "to hell with our allegiance." He is positive (and was equally so upon his cross-examination) with regard to what he heard M'Laren say. He states, that the words, "to hell with our allegiance," struck him as strong, and that though he did not take any notes of them, he considered them so strong that he can swear to them. You will therefore consider as far as this witness goes, whether you have not a deposition to the very words. It will be for you to judge whether the exact words charged in the indictment have been proved or not, or whether the essential parts of the passage have been proved. When a very close affinity is instructed, it is for you to consider what is the fair import.

Another witness was called on the part of the prosecution, who, though he gives but an imperfect account of the speech in general, does swear to what is deserving of attention. He remembers part of the speech towards the end, "to hell with," or "for allegiance." He said, the words, "if he turned a deaf ear to the voice of his people," were followed by the expressions I have just cited about allegiance. This is the evidence of Merrie; and you will consider whether it does not corroborate the special account which Mr. Finnie gives of the speech he heard M'Laren deliver. No attempt was made to examine Finnie as to the situation where he stood at the meeting, or whether there was any noise or difficulty of hearing.

The question as to the speech actually delivered does not rest here, because you will find it was admitted by M'Laren himself, in his declaration before the sheriff, that he did give in a manuscript containing his speech to the committee to be printed, and that the printed account "is near about what the declarant said on the above occasion, except what is said about the middle of the seventh page as to allegiance, which the declarant thinks he did not deliver in the words as expressed in the publication." You have, besides this, the evidence of other witnesses. In particular, Samson swears, that the speech was read over in M'Laren's presence, and that Mr. Baird, the other prisoner, made an alteration on it in pencil; that he inserted words, making the speech conformable to the printed account of it here before us. So that this circumstance of the MS. having been produced, read over and revised, in the presence of these men, and an alteration being made by Baird, without any objection, as Samson swears, having been made by M'Laren, shews that M'Laren approved of the alteration, or at least that he did not oppose it; and this, with the other evidence, goes far to shew what was the true nature of the speech delivered upon that occasion.

You have to compare the printed report with the very words as heard by Finnie which came out of M'Laren's mouth. If you think it your duty to take the printed statement as the true account of what was said, "But should

* See Lord Abercromby's summing-up in the case of *Eyrie Palmer* ante Vol. 2. p. 367.

he be so infatuated as to turn a deaf ear to their just petition, he has forfeited that allegiance; yes, my fellow townsmen, in such a case, to——with their allegiance;" you will keep in view, that M'Laren gave in the manuscript of his speech to be printed, and was present when Baird inserted these words; and you will decide for yourselves, whether there is any doubt that he permitted that, which he took no steps to prevent. But again if you take into view the words as given by a respectable witness, and confirmed, to a certain extent, by another witness, and admitted by the prisoner himself to Mr. Johnstone, you will consider whether there is any rational ground for doubt as to the import of the passage of the speech which M'Laren delivered having been sufficiently established.

Next, with regard to Mr. Baird, the case is of a different description as to the facts, for he is not alleged to have made any speech at all. The charge against him is, that he was one of those who printed and published a statement of those proceedings, containing not only M'Laren's speech, but those of others which are founded on as being of a seditious and inflammatory nature. It does appear in evidence that Mr. Baird was at meetings of the committee, both before and after the public meeting; and when the decision was taken as to printing and publishing the proceedings he was present. It has no doubt been proved, on his part, that he was one of those who did oppose in the committee the printing of the passage in M'Laren's speech, but that his objection was overruled; and had Mr. Baird's case rested here, and had the public prosecutor endeavoured to implicate him in the publication, by his merely being present at the public meeting, it would have been difficult indeed to have persuaded any jury to have found a verdict against him. But his conduct was different; for, after his objection had been overruled, he superintended the publication; and it is fully proved that he went twice or three times to the printing-office with Mr. Andrew, who was employed in revising the proof sheets, and that, upon one of these occasions he suggested the correction of a grammatical error. This evidence will probably be sufficient to satisfy you that Mr. Baird did take a concern in the printing and publishing of what is complained of, even after he stated objections to one passage. His conduct, therefore, at this period, makes him responsible, even if the evidence stopt there; but has it not also appeared in evidence, that Crawford holds him responsible for the payment of the printer's account? and were not many copies of the pamphlet sold at his shop? Mr. Finnie swore that Mr. Baird got some copies from him, and expressed surprise that the witness had not got quit of all his copies. Mr. Baird is not a bookseller, but a grocer, and disposed of the copies in his shop; one of which copies it has been proved was there bought by Hugh Wilson.

Having stated to you what appears to me to be the result of the evidence in these particulars as to the facts of delivering and publishing the speeches complained of in this indictment, there still remains a much more important question for your decision, which it is your entire province to decide on, but with respect to which, it is my duty to submit a few observations to you. You have already had an opportunity of hearing, that on the face of this indictment, as the matters are there disclosed and undertaken to be proved, the court considered the charge relevant, and fit to be submitted to a jury; and now that the evidence has been led, and we have the whole circumstances investigated, I have no difficulty in stating, that notwithstanding all that I have listened to in the very learned, able, and ingenious criticisms, both on M'Laren's speech and on the passages of the publication which have been founded on, I am still of opinion that there is matter of a seditious description. It would be most improper, however, on my part to hold out to you that I think this a case of sedition of a most atrocious or aggravated description. That would be an erroneous impression. I have to observe, also, that I am far from thinking it proper, in the case you are now trying, to refer to other cases which are not parallel to it in the facts. But in reference to the prisoners at the bar, it does appear to me, and to the rest of the judges, to be clear, that there is on the face of the speech of M'Laren, and in the different passages which have been referred to, as well as in the context of the publication, matter of a seditious nature. How far that seditious matter has existence in point of fact, or is affected by the circumstances in evidence, or the remarks made on it, you, however are to decide. In judging of this, you are called upon to look to the intention imputed to the parties; and I concur with the learned gentleman in thinking, that it is the part of the public prosecutor to establish the criminal tendency of this alleged seditious publication. Criminal intention, or that the facts were committed wickedly and feloniously as charged, constitutes the very essence of the crime. You must be satisfied, that the proceeding was not only seditious in itself, but that there was the criminal purpose in the speeches and publication which is charged in the indictment. I do apprehend, that when a jury is called upon to decide upon the import of a speech or of a publication, it is their bounden duty to put upon that speech and publication a fair and even a mild interpretation. They are not called upon to stretch matters, or to endeavour to find out a far-fetched meaning in words. If words are of an ambiguous nature, the mildest construction of them is to be adopted; but, on the other hand, reason requires that a sound, plain, honest meaning be given to language. It is not disputed by the public prosecutor (for he himself, in some measure, followed such a course), that it is necessary to look to the context, and

not to take half a sentence of a speech or publication, but to give fair play to the accused, by referring to what precedes and to what follows. It is your business to take the documents into your own hands, and looking to the whole context to draw the conclusion whether there is sedition or not.

It is hardly possible at this late hour to go through every one of the passages which are founded on, and far less through the whole publication; but I beg leave to say, in reference to the speech of M'Laren, that there do appear to me a most improper style and tone in the whole of it. He refers to transactions of a very distant period, of which no sober-minded man would wish to revive or obtrude the recollection, as affording any rule of conduct for the people of this country, in reference to their present situation. From the beginning of the speech, in which complaints are made of the oppressions under which the country is labouring, to the conclusion, in which reference is made to the Prince Regent, there is a general style of inflammatory declamation. Nor was this effusion unpremeditated, for notes of the speech were prepared by him at an earlier or later period before the meeting. Without going into particulars, I say there is a tone and language in this speech which are strongly inflammatory, and tending to excite in the people discontent and disaffection against the government and legislature. Of this it is, however, your province to judge. I have no difficulty in saying that the language appears to me not to be of a description which can be reconciled to the single object of petitioning.

The passage upon which the most important comments have been made is that with regard to the petition to the Prince Regent, and the consequence of his not listening to the just petitions of the people. The passage is in these words: "Let us lay our petitions at the foot of the throne, where sits our august prince, whose gracious nature will incline his ear to listen to the cries of his people, which he is bound to do by the laws of the country: But, should he be so infatuated as to turn a deaf ear to their just petition, he has forfeited their allegiance. Yes, my fellow-townsmen, in such a case, to hell with our allegiance." Take the expressions as given either in the publication, or as in evidence by the witnesses, and say what is your opinion as to this part of the speech.

A great deal of most able and ingenious criticism has been bestowed upon this passage, and with it the counsel for the panel grappled to the utmost, perceiving it of vital importance to the interest of his client. He was bordering upon very delicate ground, indeed, in the defence which he maintained. But, after all you have heard on the subject, you are to consider, whether, notwithstanding the favourable remarks made in reference to the Prince Regent, which I admit do appear in the first part of the passage in question, the language in the following part be justifiable, as having reference

to the petitions of the people at large, or to the petition of these particular persons. The term, just petition, no doubt, is employed. But who is to judge of the justice of the petition? It would appear from all that passed that the petitioners themselves were the judges. What was said to be the alternative if this petition was refused?—"To hell with allegiance," or "our allegiance." I ask of you, assensible and reasonable men, whether this language does not indicate that the Speaker had formed a purpose of throwing off his allegiance, in the event contemplated of a rejection of the petitions in question? He was to array himself against his sovereign, not in the ludicrous manner that Mr. Jeffrey suggested, but in a very different and much more serious manner; and I boldly affirm, that if a single step had been taken, by following up the language then employed by any overt act, it would not have been sedition, but plain and palpable treason. Whether the language that was here used, which, it has been said, only expresses a very delicate principle in the constitutional law of this country, was calculated to excite discontent, disunion, and public disturbance, is the question for your decision. You will judge whether the words were uttered; you will give them fair play in judging of their meaning; and in the interpretation of them you will refer to the other parts of the speech. In that way, you will satisfy your minds as to the grounds of the conclusion you may come to, and decide as to the intention of the speaker, and the import of the passage.

You will judge, also, of the meaning of the term "Oligarchy," which occurs in the speech, and in different parts of this publication: you will consider whether it alludes to any of the branches of the legislature, or must be limited to the persons forming the actual administration. I coincide with the opinion which was hinted at by my brother on my right hand* particularly when I consider the way and manner in which the term is explained by another speech founded on in the indictment. "We have these twenty-five years been condemned to incessant and unparalleled slavery by a usurped Oligarchy, who pretend to be our guardians and representatives, while, in fact, they are nothing but our inflexible and determined enemies." I think it is impossible, by any interpretation, to suppose that this has reference to ministers. It obviously has reference to the House of Commons, one of the branches of the legislature. When they complain of the oppression under which the country labours, they have reference to the Commons House of Parliament. I think the same interpretation is applicable to M'Laren's speech. You are to consider, then, whether the House of Commons, as now constituted, is meant to be designated by the "usurped Oligarchy, who pretend to be our guardians and representatives, while in fact, they are nothing

* Lord Heston, vide p. 16.

but our inflexible and determined enemies," and who have these twenty-five years condemned the country to incessant and unparalleled slavery; and you are to determine, whether, by propagating such opinions in a speech to an assemblage of 4000 persons, and afterwards introducing them in a pamphlet which was sold and circulated in the country, the panels were not guilty of sedition. I submit to you, that if there is any meaning in words, this was degrading the House of Commons,—casting on them the imputation of having enslaved the country for the twenty-five preceding years, and attributing to them all the misery which the country is represented as suffering.

There is another passage in the publication to which I think it necessary to call your attention. I mean that general statement which was made as to the proceedings which took place in the year 1793. You will find the passage in page 2, of the indictment. "But let us come nearer home. Look at the year 1793, when the debt amounted to two hundred and eleven millions, and the annual taxation to about eighteen millions; when liberty began to rear her drooping head in the country; when associations were framed from one end of the kingdom to another, composed of men eminent for their talents and virtue, to assert their rights; when a neighbouring nation had just thrown off a yoke which had become intolerable,—what did the wise rulers of this country do? Why, they declared war, not only against the French nation, but also against the friends of liberty at home." It has been argued, that the term, "wise rulers," means the ministers for the time, and that their conduct may be discussed without blame. I concur in the observation, that there is no sedition in the censure of administration merely as servants of the crown. But the passage clearly applies, not only to the government of the day, but to the system of government,—to the legislature itself. How can that be doubted, when you observe the concluding words: "Why, they declared war not only against the French nation, but also against the friends of liberty at home." Look, also, at the context. The clear import of it is, that when the country was in the awful situation described by the learned counsel, the government declared war against the liberties of the country. What took place at that time is matter of notoriety. New measures were then necessarily resorted to for the salvation of this country against the attacks of foreign and domestic foes. King, Lords and Commons, united for the purpose of securing the liberties of the country, and their measures are here manifestly represented under these words: "They declared war not only against the French nation, but also against the friends of liberty at home." You will say, in point of fact, whether the ministry or the whole legislature were referred to in this passage, and whether to circulate it was not to propagate sedition throughout the country.

There are other passages, into the consideration of which I cannot now enter. I shall just refer to one which has been commented on at great length. The passage is, "And a House of Commons; but the latter is corrupted; it is decayed and worn out; it is not really what it is called,—it is not a House of Commons," &c. It is said that there has been language used in parliament, and passages in petitions presented to parliament, stronger and more offensive in their nature, than this founded on by the public prosecutor; and that such petitions were received and laid upon the table of the House of Commons. Passages were read to you to prove this. Upon this part of the subject I must observe, that what is, or is not, tolerated by the Houses of Parliament, must be foreign to our present discussion. They are the best judges of what is a violation of their privileges; but this much I state to you, that if seditious language be used out of doors by persons in preparing a petition for parliament, even if that petition should embody the seditious words themselves, it cannot be pleaded against a charge of sedition that the petition has been received by parliament. We are bound to judge of the language employed by the test of law and common sense, and by that test to determine whether it is seditious or not. It has been held, again and again, to be no justification, in a charge of sedition, that language even of a more seditious tendency had been used in or out of parliament without being followed by any punishment.—It is stated for these panels, that stronger language has been used in other quarters; but the answer is, that is nothing to the question under consideration. If the language here be seditious, it is no matter whether such abuses have been passed over on other occasions. If such petitions as those referred to had been particularly brought under the view of the House of Commons, I should think they must have been rejected; and it would be matter of astonishment to me, indeed, if petitions couched in language far short of what is now before us were received. But in the multiplicity of petitions presented to that House, some may pass without due attention. Perhaps very objectionable petitions do lie there. But if the public prosecutor proves in this Court the utterance and publication of seditious language, it is of no consequence that petitions containing such language have even been received unchallenged by the House of Commons.

There is a part of the defence, however, deserving of your serious attention. It was ably argued by Mr. Clerk, that the language which is here complained of, having been used in connection with the exercise of the legal right of petitioning the legislature, cannot be considered as seditious. God forbid that any thing should be said by me hostile to the right of petitioning the House of Commons, the House of Lords, or the Sovereign, if the people are respectful in their language; for to

state grievances, and apply for redress, is the undoubted and unalienable right of the subjects of this realm. But I have no difficulty in saying, that if, under the pretence of petitioning, language of a seditious nature be used, those using or publishing it must answer for the consequences. The sacredness of the right which is to be carried into effect, will not sanction the use of unlawful means in the accomplishment of it; and those who come forward upon such occasions must abstain from inflammatory, seditious, or treasonable expressions. It would be a gross abuse of the inviolable right of petitioning, if it afforded an opportunity for every kind of language being uttered, however improper or reprehensible. Such never can be the result of what is due to the sacred right of petitioning; and therefore the learned gentleman admitted that he did not carry his argument so far as to say, that a petition may sanction any thing of an improper nature; but he argued, that if you be satisfied that the object was, to petition the legislature, you will be disposed to make due allowance for the language which may be used in calling attention to grievances. To this extent the observation is well founded. His good sense must have made him perceive that both the law and constitution would sink under any other doctrine. That is the test to which you are to bring the matter now under your consideration. You are to look to the whole facts and whole publication; and you will judge whether, when the people assembled to prepare this petition, there was or was not a blameable excess in the language employed by them, and whether this was not greatly aggravated by the proceedings of the meeting being embodied in a publication, and circulated over the country. I have no wish, gentlemen, to press this case further than the facts appear to warrant. It is your bounden duty to weigh all those expressions which are fairly admitted to be too strong, and even indecent; and it is your province to say, whether these expressions do amount to sedition, have a tendency to bring into contempt the government and legislature, and to stir up the people to disaffection and rebellion.

I certainly do most sincerely lament that our attention has been called to this case. This is the first trial for sedition that has occurred for a considerable length of time; and I can assure the learned gentlemen that I had fondly flattered myself, that even at my time of life I should not have again had occasion to apply my mind to the study of this part of the law. I hoped and trusted, that after the clear exposition of the law in 1793, 1794, and 1795, in the different prosecutions which were then found necessary, sanctioned and approved of by the unanimous voice of the country, I should not have been obliged to consider cases of this description. But so it is, that although the situation of this country is so highly prosperous and enviable when compared with the rest of Europe, it is

in Britain in 1817 that we are called on to consider such cases. An allusion was made to the state of the country at the former period, as accounting for, and justifying the prosecutions which then took place, as well as their result. But the learned counsel was afterwards under a necessity of alluding, also, to what has recently happened throughout the empire at large. Extraordinary and strong measures have been adopted, and the enactment of new laws has been rendered necessary by the state of the times. But you are not to be affected by such considerations, and I would not even have alluded to them had they not been alluded to by the counsel. You must lay all considerations of this kind out of your view; and, considering this indictment as brought by his majesty's advocate in the discharge of his duty, you are to determine on the facts, and say whether the panels are guilty or not of sedition.

I regret extremely, in a different point of view, that this should be the first case brought before this Court, and from a county with which I am connected by so many ties. It appears to me that both of the prisoners had been men of exemplary conduct and good character. According to the evidence, M'Laren's private character had been very respectable. Nothing but what was right had ever been observed in his conduct. He had never demonstrated any thing like a disposition to tumult or disturbance, but was a volunteer, and had served as such with reputation. The testimony to his general character well deserves your consideration, in judging of the criminal intentions of the parties, and deciding whether their purposes were seditious. With regard to Mr. Baird, again, you will concur with me in deeply lamenting the exhibition of this charge against him, standing as he has done in so fair a situation in society. Many of the witnesses, even for the crown, have given him a high character. The inhabitants of Kilmarnock had some time ago appointed him one of their police commissioners, thus showing their good opinion of him. It appears, that he was a man of respectable moral character, and, in the opinion of the witnesses, attached to the government and to the constitution, though he had a strong opinion of the propriety and necessity of a reform in parliament. It has been strongly affirmed for him, that he never had any thing further in contemplation upon this or any other occasion. With regard to both the prisoners, they were not known to have been ever connected with any other political societies.

These are points important for your consideration in judging of the essential question which you are to determine as to the guilt of the prisoners. If, upon a careful consideration of the whole facts in the publication, and the evidence which has been adduced, you shall be of opinion that no sedition or seditious intention has been proved against the prisoners, you will find by your verdict that they are not

guilty of the charge. If, on the other hand, you are of opinion that there is seditious matter in the speech and publication, and that the charge of criminal intention imputed to them in the indictment has not been done away by the general conduct of the prisoners, you will not, I am confident, shrink from your duty, but will find them guilty of the crime of sedition libelled in the indictment. And, if you think that the scales hang doubtful, and that it is difficult to say whether the prisoners were guilty or not, the former good character and conduct of these men are entitled to favourable consideration. I leave the case in your hands, being confident that you have paid most particular attention to all that has passed, and can have no object in view but to return a conscientious verdict. Whatever you may do, I trust your verdict will be satisfactory to your own minds, and equally so to the public.

April 7th, 1817.

Lord Justice Clerk.—Gentlemen of the jury, who is your chancellor?

Jury.—Mr. M'Kinlay.

[Mr. M'Kinlay gave the verdict into court.]

Lord Justice Clerk.—Alexander M'Laren and Thomas Baird, attend to the verdict of the jury on your case.

At Edinburgh, the 6th of April, 1817 years.

The above assize having inclosed, made choice of the said Archibald Mackinlay to be their chancellor, and of the said John Baxter to be their clerk; and having considered the criminal indictment, raised at the instance of his majesty's advocate for his majesty's interest against Alexander M'Laren and Thomas Baird, panels, the interlocutor of relevancy pronounced thereon by the Court, the evidence adduced in proof of the indictment, and the evidence adduced in exculpation, they, by a plurality of voices, find Alexander M'Laren guilty of the crimes libelled in the indictment; and Thomas Baird, all in one voice find him guilty of the crimes libelled in the indictment. But, in consideration of their former good character, unanimously recommend them both to the clemency of the Court. In witness whereof, their said chancellor and clerk have subscribed these presents, consisting of this and the preceding two pages, in their names and by their appointment, place and date aforesaid.

(Signed) A. MACKINLAY, chancellor.
J. BAXTER, clerk.

Lord Justice Clerk.—Gentlemen of the jury, you are now discharged from the very fatiguing and painful duty which you have had to perform; and I feel it incumbent on me to state to you, that the verdict which you have returned, is, in its general result, such as I was

led to expect from a jury of your respectability, after the unwearied attention you have bestowed upon the whole of the trial. I am confident that this verdict, while it is satisfactory to your own minds, will be of great service to your country; and I have only to add, that the recommendation with which you have accompanied the verdict, and which, under all the circumstances of the case, is so proper, will meet from the Court with all the attention it deserves.

Lord Advocate.—It only remains for me now to crave the judgment of the Court.

Lord Justice Clerk.—Have the counsel for the prisoners any thing to say on this verdict?

Mr. Jeffrey.—In stating to your lordships, in one or two words, what has occurred to us on the verdict, I hope I am not doing more than my duty. It appears to us, that though its general meaning is impossible to be mistaken, there is an inaccuracy in one point, which is worthy of consideration. Both the prisoners are charged *with sedition and with no other crime*, and the verdict has found them both guilty of the *crimes* libelled, using the plural and not the singular number. There may be many facts charged in the minor proposition of the indictment, but there is only one crime charged in the major proposition in this case; and you are aware that the verdict is an answer to the major, and not to the minor proposition. Logical accuracy is always required on these occasions, and this, therefore, is not a verdict on which the Court should proceed to inflict punishment. There is only *one* crime charged in the major proposition, and the minor contains different acts libelled on in proof of the crime stated in the major proposition, and yet the verdict finds the panels guilty of the *crimes* libelled on. I am now arguing to a court of law, and not to a court of equity. The verdict, in finding the prisoners guilty of the *crimes* libelled, has found them guilty of something not charged against them.

There is another circumstance which it is my duty to mention, that this verdict appears to be dated on Sunday. I believe this objection has occurred in other cases, but has never hitherto been seriously argued.

Lord Justice Clerk.—Mr. Jeffrey is only doing his duty in stating any objections that occurred to him. But I apprehend there is nothing in the objections which have been offered. The mere slip of a letter cannot be considered as a substantial objection in this case. If *two crimes* had been charged in the major proposition, and the verdict had only found the prisoners guilty of the *crime* libelled, it might have been difficult to say which of the crimes was meant. But here there can be no doubt of the meaning of the verdict.

Lord Hermand.—I remember in a trial at Ayr, of one *Laurie*, on a charge of *sedition*

reset of theft, the jury found the panel guilty of the crime libelled. I pleaded that the verdict was void, as being uncertain, at least that the milder *poena* should be inflicted. Lord Justice Clerk Miller adopted the latter alternative, and imposed an arbitrary punishment. A similar circumstance occurred in a question before the Court of Admiralty, about a wreck on the coast of Orkney.

In this case the word crimes is not improper. Sedition is the general character of the charge; but there are two species of sedition libelled—one the making a speech, another the publishing a book.

Lord Hermand.—I concur in the observations which your lordship addressed to the jury. I think this jury deserves the thanks of the Court; and, what is more, the thanks of the country. I think they deserve the thanks of another class of men, of whom I know little but by report—of those who are considering how far they may go in opposition to the constitution with safety to their lives.

It was said by counsel, that the present was far from being an aggravated species of sedition. I like it the better for that. It is more agreeable to my feelings—to the feelings of every jury, and of every judge—to have more moderate crimes to try, than to be obliged to inflict transportation, or death.

I am the more impressed with a sense of the merits of this verdict, that when in groping my way about 11 o'clock at night, in the dark streets of this city, and reflecting with myself what verdict I should have given, had I been a jurymen in this case, such was the effect of a blaze of eloquence, that I cannot say whether I would have said yes or no, if I had been at that time obliged to give an opinion, whether or not the prisoners were guilty. Like the jury I should have wished to have been inclosed for consideration. But, having bestowed it, any doubt disappeared, and I came to the opinion, that the relevancy of the indictment was clear and the facts completely proved.

Every word—every letter of this indictment has now been found proved. The jury have found it proved, that after speaking of the Regent with due respect (whether seriously or not I do not know), they go on to state, “But should he be so infatuated as to turn a deaf ear to their just petition, he has forfeited their allegiance; yes, my fellow-countrymen, in such a case, *to hell with our allegiance.*”

It is not the time now to inquire into the evidence; though, were that competent, I should be clear that this very expression is proved against the panels. And it has thus happened, as often occurs, that the strongest circumstances come out in the evidence of the exculpatory witnesses. What I allude to is, the deposition of Brewster, who says there was a vote put in the committee with regard to printing the above passage; that some objected to it being printed; and that another said it ought to be published in order that the mi-

nutes should not be garbled. Is not that evidence that these were the words uttered in the speech? But it is unnecessary to go through the evidence. It appears to me, that it was not the ministers of the day, but the constitution that was attacked. But I need not go into that. All that remains for us is, to consider the amount of the punishment to be inflicted on the prisoners.

The milder the punishment can be made, if it be such as may deter others from committing the like crimes in time coming, that is the punishment that will meet my wish and that of your lordships. This case is different from those tried in 1793 and 1794. I looked into them last night. They are extremely different from the present case. There the punishment awarded was transportation. None of your lordships can be of opinion we can here go that length; and, considering the recommendation of the jury, I think we shall satisfy our own conscience and the justice of the case, by inflicting six months' imprisonment on the panels. At the same time, they should be obliged to find security to keep the peace for the period of three years; Mr. Baird, who appears to be a man of opulence, under the penalty of 200*l.*, and the other under that of 40*l.*, which I think is not unreasonable.

Lord Gillies.—Both of the unfortunate panels at the bar stand accused of sedition. Of that crime, after a long trial, conducted with infinite ability on both sides, the unhappy persons have been found guilty by a jury. Under these circumstances, nothing remains for us but to give effect to the verdict by inflicting such punishment as it appears to us their case deserves. Taking all the circumstances into consideration, and among others the recommendation of the jury, I concur in opinion as to the punishment which has been proposed—that they should be imprisoned for six months, and find security for good behaviour.

Lord Pitmilley.—In considering the judgment which should be pronounced on this occasion, we naturally look to the judgments which have been pronounced in similar cases, and particularly to those which have been referred to by lord Hermand. For, in every branch of judicial procedure, and in nothing more than in pronouncing judgment on a verdict inferring an arbitrary punishment, it is desirable to be guided by precedents. If this case had resembled the case of Ryshe Palmer,* to which it has been assimilated by counsel, I should have given it as my opinion that the punishment should be the same as in that case. And if, unhappily for this country, such cases of real and aggravated sedition shall come before this Court—cases little to be distinguished from treason—it will be my opinion, after a full consideration of the law, and of the whole of the former cases, that transportation is the proper punishment. But I agree in the opinion

* 2 How. Mod. St. Tr. 237.

which has been expressed, that this is a case very different from the others alluded to, and that it has a nearer resemblance to that of Robertson and Berry,* than to any others which occurred at that time; and I therefore think that imprisonment is the appropriate punishment in this case, and that which is pointed out by precedent. As to the duration of the confinement, I am always averse to long imprisonment; and considering the recommendation of the jury, I concur in the limited time proposed in this case.

Having said thus much, I must express my hopes, that this verdict will put down the crime of sedition at the present juncture in this country. It was urged in defence of the prisoners, that the culpable expressions were employed when the persons were met, in a season of distress, to petition the King and both Houses of Parliament. But surely the right of petitioning may be exercised without making the speeches and resolutions, at such meetings, vehicles for sedition and treason. What was said in a former case as to the liberty of the press and of speech, may be applied to the right of petitioning. As every man may print or may speak what he pleases, so may he use what language he thinks fit in his petition, or in the speeches and resolutions accompanying the petition: But under this condition, that if in his petition, or in the speeches and resolutions accompanying it, he is guilty of treason, sedition or scandal, he must be answerable for the consequences, just as he would be answerable for those crimes if committed by him in exercising the liberty of the press, or the liberty of speech. Why should it be otherwise? I cannot believe that this necessary restraint on the right of petitioning will be any obstruction to the right itself. If the real object of the petition be to obtain its prayer, why should it be couched in offensive terms? Is that the way to attain its object? It is the very reverse. It is the way to get it refused. Such a course can be followed only for the purpose of getting a refusal, and at the same time spreading alarm through the country. To check such conduct, as the verdict of the jury tends to do, instead of injuring the right of petitioning, is the method of securing it, and rendering it truly valuable to the country.

I have read the whole of the pamphlet from which extracts are made in the indictment, and I am sorry to say I have formed a much worse opinion of the intentions of all the parties than I had by reading the indictment, or by any thing that passed on the trial. It may have done little injury, for the range of its circulation was limited; but let any intelligent man consider what would have been the consequences, if this pamphlet had passed unnoticed, and if similar publications had been circulated in every village and populous town in the country. No man who reads this pam-

phlet can hesitate to say, that in such a case the country would have been filled with the most combustible materials, and that a slight spark would have lighted up rebellion from one end of the island to the other.

I shall only add, that if the prisoners and their associates will not learn wisdom from the verdict, and the opinion of the Court, I trust they will learn it from what was uttered by their own counsel, with a force of eloquence which, I trust, has made a lasting impression on them. Mr. Jeffrey told them that they were treading on delicate ground, that the expressions they used were most improper, indecorous, and absurd, and that what they said only betrayed an ignorance of the subject on which they spoke. I trust they will remember this lesson, and that all others will learn to profit by their example.

Lord Roston.—I am of the same opinion with the judges who have spoken regarding this verdict, and I particularly agree with the words which have fallen from the last judge who delivered his sentiments. I shall only further observe, that while I concur most cordially as to the punishment proposed to be awarded in this case, I have no doubt either of the right or the duty of the Court to inflict a higher punishment when required; and especially to award the punishment of transportation in a case of aggravated sedition. In the present case, the short period of imprisonment which has been suggested, is, I think, sufficient, all circumstances being considered.

Lord Justice Clerk.—I am extremely happy, that, under the whole circumstances of this case, and particularly the recommendation which has been given to your lordships by the very respectable jury who had to try it, I am enabled, in the discharge of my duty, to concur in the proposition now made as to the punishment which should follow upon this verdict. For I have, upon the most mature reflection, and the most deliberate consideration I have been able to bestow upon the law of the case, formed a clear and unalterable opinion, that, for cases of aggravated sedition, such as those which have been alluded to by some of your lordships, the proper, the legitimate, the necessary punishment for this Court to award, is, the highest short of a capital one.

I take this opportunity, however, of stating as I before did to the jury, that, notwithstanding the particular circumstances and aspects of this case, it does not appear to be one of that highly aggravated class. But I should be guilty of a dereliction of my duty if I did not take this opportunity of distinctly stating, that, though not one in the highest class of sedition, the offence of which these prisoners have been convicted, upon evidence, clear, satisfactory, and convincing, is a species of sedition attended with circumstances of considerable aggravation. I allude, in particular,

* 2 How. Mod. St. Tr. 79.

to the case of the prisoner, Thomas Baird. For, though I did not think it necessary or proper in me to dwell on that circumstance in my observations to the jury when I summed up the evidence to them, I do now think it my duty to state, that the situation in which that gentleman stood,—the rank of life in which he formerly moved,—the character he possessed,—the influence he had,—and, above all, the commission which he had lately held as an officer, do, in relation to this offence, and to the circumstances in which it was committed, render his case of greater aggravation than that of the other prisoner.

This gentleman, although moving in an elevated sphere in the town of Kilmarnock, and selected by its inhabitants to be a commissioner of police, is proved, by incontrovertible evidence, to have associated for days with persons, some of them of the very lowest rank (for M'Laren is only an operative weaver), forming a deliberate plan for the meeting which has brought him into his unfortunate situation. I should have conceived Mr. Baird would have much better discharged his duty to his country,—would have shown a much better attention to the general distress, (for which I greatly feel, but trust it is now in a way to be alleviated), had he confined his exertions to contributing, according to his means, for the mitigation of that distress, instead of taking those active measures which it is proved he did take, in preparing the business,—in meetings,—in concocting the measures of the day,—and, above all, in actually putting in the mouth of the automaton who appeared in that box, a speech, which, when it is examined, will be found to contain the most scandalous and seditious matter. For the contents of that speech, whether Burt was the real or pretended author of it, Mr. Baird rendered himself responsible. I must therefore say, that, considering Mr. Baird had filled the honourable situation of Captain in a volunteer corps, he had altogether forgotten his duty in ever lending himself as a party to any such proceedings, the guilt of which is now attached to him by the verdict of the jury.

With regard to Alexander M'Laren, I have only to say, that he has been found guilty of delivering a speech which answers for itself, and I shall add nothing more on the subject.

But there is one observation which, in my former remarks, I omitted to state to the Jury, and therefore now think it my duty to make, upon the passage in the indictment taken from one of the speeches, in reference to the conduct of the clergy of Scotland. Your lordships know well to what I allude. The passage is, "Their *Reverend* hirelings would convince you that you are suffering under the visitation of the Almighty, and therefore ought to be submissive under the chastening stroke." I have asked myself this question, after paying every attention to the ingenious and eloquent observations made in order to give the

go-by to this passage, what could be the true meaning of those who were accessory to this most scandalous libel on the clergy of Scotland. I have asked myself, whether it was meant to be applied to the Established Clergy, who are thus branded with being "Reverend hirelings, who would convince the people that they are suffering under the visitation of the Almighty, and therefore ought to be submissive under the chastening stroke." Is there any thing in their character to warrant such imputations against them? Did not all those who attended that meeting know, that there is not one of the Established Clergy who is not completely independent of the crown itself, and that they hold their situations as securely as any persons whatever do their property? What is there then in the conduct and character of the Established Clergy which could render them liable to the shameful imputation, that, as hirelings, they could be guilty of inculcating any particular doctrines? And what is the foundation of this charge? It is, that they are guilty of having endeavoured to impress on their hearers, that the distress of the country is to be viewed as the dispensation of Providence. Is there any man, with the slightest impression of religion on his mind, who will deny, that the severity of a bad season, the pressure of a bad harvest, proceeds from the will of Providence? Or was it meant to be impressed on the deluded and ignorant hearers at that meeting, that the Government, or any portion of the people, were responsible for the distress prevalent in the country, which had been occasioned by a bad harvest, that had doubled the price of the necessaries of life? And yet because resignation to the Divine Will had been recommended by the Clergy, they are branded as hirelings.

On the other hand, I have asked myself whether this charge was meant to be imputed to the respectable body of dissenting clergymen, who, almost without a solitary exception, have shown themselves to be attached to the best interests of the country, and have been distinguished for their loyalty and steady allegiance? Is it this class that was meant to be so branded? If so, they have to thank those of their flocks who could give countenance to the publication of such scandal against them. This passage appears to me to designate the true character of the publication as most objectionable and inflammatory. It was intended to weaken the affections of the people to the government and established constitution of the country, while the character of the ministers of religion was likewise to be degraded. I ask, what would be the consequences if such proceedings were unchecked?

Notwithstanding this circumstance, however, which it was my duty not to omit to notice, I am happy, that in reference to the strong testimony borne to their good characters in times past, backed by the recommendation of the jury, we are justified in the discharge of

our sacred duty, in pronouncing the mild sentence (for the sentence certainly is extremely mild) which has been proposed, viz. that they shall be imprisoned for six months within the Tolbooth of the Canongate of Edinburgh (thus making the punishment of imprisonment as light as can be done), and that Thomas Baird shall find security to keep the peace for three years under the penalty of 200*l.*; and that Alexander M'Laren, in reference to his circumstances, shall only find security for the same period under the penalty of 40*l.*

Alexander M'Laren and Thomas Baird: after a most careful and attentive consideration of the whole circumstances of the case that was exhibited against you, a jury of your country has found both and each of you, the one by a plurality of voices, and the other, all in one voice, guilty of the crime of Sedition, as charged in the indictment. It is, I can assure both of you, a painful duty for me to announce to you, in reference to this verdict, the judgment which the Court has found it necessary to award against you. I say, I do it with sincere regret, when I reflect on the strong testimony that was borne to your former good characters. I lament that you had permitted yourselves to be misled on this unfortunate day of the 7th of December, the one to utter, and the other afterwards to give circulation to what a jury has pronounced to be sedition. I do trust and hope that the result of this verdict, and of the opinions you have heard pronounced by the whole Court, will have its due effect on both of you; that it will teach you, that however apparently innocent your proceedings may have been, they did result in crime, and might have been, if the example had been generally followed, productive of mischief to the interests of your country. I trust also, the salutary check given to proceedings of this description, will have an important effect on the public mind, by showing, that sacred as the right of petition is, entitled as the people of this free country are to state their grievances to government and the legislature, and to point out what may appear to them as remedies, that right affords no screen or protection to those, who, in the prosecution of that lawful object, lose sight of their duty, and are guilty of the crime of sedition.

While the subjects of this country are entitled to state their grievances to the legislature, they must be careful, that neither in the previous proceedings, the speeches and resolutions, nor in the petitions themselves, they insert matter which is clearly of a criminal nature, seditious in its tendency, and likely to produce lasting mischief to their country. It will teach them, that although entitled to exercise that right, they must not, in its exercise, be guilty of a violation of law. I therefore trust that the result of this trial will be of important benefit to you in the course of your future lives, and that this Court shall not, with regard to you or others, have soon occasion again to animadvert on the crime of sedition. I likewise trust, that considering the recommendation of the jury, and the lenient punishment which, under all the circumstances, is about to be awarded against you, you will firmly resolve, that, when you again return to society, in which you formerly moved in a respectable line, you will be sincerely loyal in your hearts, and attached to the true interests of your country and the constitution under which you have the happiness to live.

SENTENCE.

The Lord Justice Clerk and Lords Commissioners of Justiciary having considered the verdict above recorded, in respect thereof decern and adjudge the said Alexander M'Laren and Thomas Baird to be carried from the bar to the Tolbooth of Canongate of Edinburgh, therein to be detained for six months from this date, and thereafter until they shall find sufficient caution and surety, acted in the books of Adjournal, for their good behaviour for the space of three years from and after the expiration of the said period of imprisonment, and that under the respective penalties following: viz. The said Thomas Baird under the penalty of 200*l.* sterling, and the said Alexander M'Laren under the penalty of 40*l.*; and upon the lapse of the said period of imprisonment, and finding caution as aforesaid, grant warrant to and ordain the magistrates of Canongate and keepers of their Tolbooth to set the said Thomas Baird and Alexander M'Laren at liberty.

(Signed)

D. BORER, I. P. D.

699. Proceedings in the High Court of Justiciary at Edinburgh, on two successive Indictments, raised by his Majesty's Advocate, against WILLIAM EDGAR, for administering unlawful Oaths, April 9th, May 26th: 57 GEORGE III. A. D. 1817.

COURT OF JUSTICIARY.

APRIL 9, 1817.

Present.

Rt. Hon. David Boyle, Lord Justice Clerk.
 Lord Hermand.
 Lord Gillies.
 Lord Pitmilley.
 Lord Reston.

Counsel for the Crown:

Rt. Hon. Alexander Maconochie, Lord Advocate [afterwards a lord of Session and Justiciary, with the title of Lord Meadowbank.]
 James Wedderburn, Esq. Solicitor-General.
 H. Hope Drummond, Esq.

H. Warrender, W. S. Agent.

Counsel for William Edgar.

John Clerk, Esq.
 Geo. Cranston, Esq.
 Thos. Thomson, Esq.
 James Moncrieff, Esq.
 Francis Jaffrey, Esq.
 J. P. Grant, Esq.
 Henry Cockburn, Esq.
 J. A. Murray, Esq.

G. W. Boyd, W. S. Agent.

William Edgar and John Keith were placed at the bar.

Lord Justice Clerk.—William Edgar and John Keith, pay attention to the indictment against you, which is now to be read.

“ William Edgar and John Keith, both present prisoners in the Castle of Edinburgh, you are indicted and accused, at the instance of Alexander Maconochie of Meadowbank, his majesty's advocate, for his majesty's interest: That albeit, by an act passed in the fifty-second year of his present majesty's reign, intituled, ‘ An act to render more effectual an act passed in the thirty-seventh year of his present majesty, for preventing the administering or taking unlawful oaths,’ it is *inter alia* enacted, ‘ That every person who shall, in any manner or form whatsoever, administer, or cause to be administered, or be aiding or assisting at the administering, of any oath or engagement, purporting or intending to bind the person taking the same to commit any treason or

murder, or any felony punishable by law with death, shall, on conviction thereof by due course of law, be adjudged guilty of felony, and suffer death as a felon, without benefit of clergy.’ And further, by section fourth of the said act, it is enacted, ‘ That persons aiding and assisting at the administering of any such oath and engagement, as aforesaid, and persons causing any such oath or engagement to be administered, though not present at the administering thereof, shall be deemed principal offenders, and shall be tried as such; and on conviction thereof by due course of law, shall be adjudged guilty of felony, and shall suffer death as felons, without benefit of clergy; although the persons or person who actually administered such oath or engagement, if any such there shall be, shall not have been tried or convicted.’ And further, by section sixth, of the said act, it is enacted, ‘ That any engagement or obligation whatsoever, in the nature of an oath, purporting or intending to bind the person taking the same to commit any treason or murder, or any felony punishable by law with death, shall be deemed an oath within the intent and meaning of this act, in whatever form or manner the same shall be administered or taken, and whether the same shall be actually administered by any person or persons to any other person or persons, or taken by any other person or persons, without any administration thereof by any other person or persons.’ YET TRUE IT IS AND OF VERITY, that you, the said William Edgar and John Keith, are both and each, or one or other of you, guilty of the said crimes, or of one or more of them, actors or actor, or art and part: *In as far as you*, the said William Edgar and John Keith, having, at Glasgow, and in the vicinity thereof, in the course of the months of November and December 1816, and of January and February, 1817, wickedly, maliciously, and traitorously conspired and agreed with other evil-disposed persons to break and disturb the public peace, to change, subvert, and overthrow the government, and to excite, move, and raise insurrection and rebellion, and especially to hold and attend secret meetings, for the purpose of obtaining annual parliaments, and

universal suffrage, by unlawful and violent means, did then and there, both and each, or one or other of you, wickedly, maliciously, and traitorously administer, or cause to be administered, or did aid or assist at the administering, to a great number of persons, an oath or engagement, or an obligation in the nature of an oath, in the following terms, or to the following purport:—‘In awful presence of God, I, A B, do voluntarily swear, That I will persevere in my endeavouring to form a brotherhood of affection amongst Britons of every description, who are considered worthy of confidence; and that I will persevere in my endeavours to obtain for all the people in Great Britain and Ireland, not disqualified by crimes or insanity, the elective franchise, at the age of twenty-one, with free and equal representation, and annual parliaments; and that I will support the same to the utmost of my power, either by moral or physical strength as the case may require: And I do further swear, that neither hopes, fears, rewards, or punishments shall induce me to inform on, or give evidence against any member or members, collectively or individually, for any act or expression done or made, in or out, in this or similar societies, under the punishment of death, to be inflicted on me by any member or members of such societies. So help me God, and keep me steadfast.’ Which oath or obligation did thus purport or intend to bind the persons taking the same to commit treason, by effecting by physical force the subversion of the established government, laws, and constitution of this kingdom. And, more particularly, you, the said William Edgar and John Keith, did, upon the 1st day of January 1817, or on one or other of the days of that month, or of December immediately preceding, or of February immediately following, at a secret meeting held for that and other unlawful purposes, in the house of William Leggat, change-keeper in King-street, Tradeston, in the vicinity of Glasgow, or elsewhere at Glasgow, or in the immediate vicinity thereof, both and each, or one or other of you, wickedly, maliciously, and traitorously administer, or cause to be administered, or did aid or assist at the administering an oath or obligation in the terms above set forth, or to the same purport, to Peter Gibson, John M’Lauchlane, John Campbell, and Hugh Dickson, all present prisoners in the Castle of Edinburgh; as also to James M’Ewan, now or lately carding-master at Humphries Mill, Gorbals of Glasgow, and M’Dowal Pate or Peat, now or lately weaver in Piccadilly-street, Anderston, in the vicinity of Glasgow, who, conscious of their guilt in the premises, have absconded and fled from justice; as also to

John Connelton, now or lately cotton-spinner in Calton of Glasgow, or to one or other of them, and to other persons, whose names are to the prosecutor unknown, the said oath or obligation, thus binding, or purporting to bind the persons taking the same to commit treason, as said is. (2.) *And further you*, the said William Edgar and John Keith, did, upon the 4th day of January, 1817, or on one or other of the days of that month, or of December immediately preceding, or of February immediately following, at the house of Neill Munn, innkeeper and stabler, in Ingram-street, Glasgow, or elsewhere at Glasgow, or in the immediate vicinity thereof, both and each, or one or other of you, wickedly, maliciously, and traitorously administer, or cause to be administered, or did aid or assist at the administering an oath or obligation in the terms above set forth, or to the same purport, to the said Peter Gibson, John M’Lauchlane, John Campbell, Hugh Dickson, M’Dowal Pate, or Peat, and James M’Ewan; as also to James Hood, Andrew Somerville, John Buchannan, and James Robertson, all present prisoners in the Tolbooth of Glasgow, or to one or other of them, and to other persons, whose names are to the prosecutor unknown, the said oath or obligation thus binding, or purporting to bind, the persons taking the same to commit treason, as said is. And you the said William Edgar having been apprehended and taken before Daniel Hamilton, esquire, one of the sheriffs-substitute of Lanarkshire, did, in his presence at Glasgow, on the 6th day of March, 1817, emit and subscribe a declaration; and having been taken before Robert Hamilton, esquire, Sheriff-depute of Lanarkshire, you did, in his presence, at Glasgow, upon the 7th and 8th days of March, 1817, emit and subscribe two several declarations: And you the said John Keith having been apprehended, and taken before the said Robert Hamilton, esquire, did, in his presence, at Glasgow, on the 6th and 7th days of March, 1817, emit and subscribe two several declarations: All which declarations, being to be used in evidence against each of you respectively, will be lodged in due time in the hands of the Clerk of the High Court of Justiciary, before which you are to be tried, that you may have an opportunity of seeing the same. At least, times, and places foresaid, the said oath or engagement, or an oath or engagement to the same purport, was wickedly, maliciously, and traitorously administered, or caused to be administered; and some persons did aid or assist at the administering thereof; and you the said William Edgar and John Keith are both and each, or one or

either of you, guilty thereof, actors or actor, or art and part. All which or part thereof, being found proven by the verdict of an assize, before the Lord Justice General, the Lord Justice Clerk, and Lords Commissioners of Justiciary, you the said William Edgar and John Keith ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming."

"H. HOME DRUMMOND, A. D."

LIST OF WITNESSES.

1. Robert Hamilton, Esq. sheriff-depute of Lanarkshire.
 2. Daniel Hamilton, Esq. one of the sheriffs-substitute of Lanarkshire.
 3. Daniel McCallum, clerk to John Drysdale, sheriff-clerk of Lanarkshire.
 4. Matthew Burns, clerk to George Salmond, procurator-fiscal of Lanarkshire.
 5. John Leslie, clerk to the said John Drysdale.
 6. Joseph Reid, writer in Glasgow.
 7. Alexander Calder, sheriff-officer in Glasgow.
 8. James Thomson, clerk to the said John Drysdale.
 9. Alexander Hunter, change-keeper, Old Wynd of Glasgow.
 10. Marion M'Laren, or M'Lachlan, now or lately servant to the said Alexander Hunter.
 11. John Robertson, innkeeper and stabler, Gallowgate Glasgow.
 12. Agnes Campbell, wife of Thomas Dow, steam-boiler maker and smith at Girdwood and Company's foundry in Hutchesontown, in the vicinity of Glasgow.
 13. Janet Rentoul, now or lately servant to Neill Munn, innkeeper and stabler in Ingram-street, Glasgow.
 14. Alison Wilson, now or lately servant to the said Neill Munn.
 15. Matthew Fyfe, spirit-dealer in Wilson-street, Glasgow.
 16. Jean Boyd, wife of the said Matthew Fyfe.
 17. William Leggat, change-keeper, in King-street, corner of Centre-street, Trades-ton, in the vicinity of Glasgow.
 18. Hugh Dickson, present prisoner in the Castle of Edinburgh.
 19. Peter Gibson, present prisoner there.
 20. John M'Lauchlan, present prisoner there.
 21. William Simpson, present prisoner there.
 22. James Hood, present prisoner in the Tolbooth of Glasgow.
 23. John Campbell, present prisoner in the castle of Edinburgh.
 24. Thomas Sinclair, present prisoner there.
- H. HOME DRUMMOND, A. D.

LIST OF ASSIZE.

County of Edinburgh.

Francis Carteret Scott, of Ballerno.
Richard Woolley, of Whitehouse.

James White, tobacconist in Dalkeith.
Robert Lyle, baker there.
John Wood, merchant there.
John Brown, farmer, Carrington.
Andrew Johnston, farmer, Primrose-barns.

County of Haddington.

William Acheson, junior, of Drummore.
John Sommervill of Moreham.
William Hay, farmer, Howden.
John Brodie, farmer, West Fenton.
Robert Hope, farmer, Fenton.

County of Linlithgow.

William Glen of Mains.
William Dawson, younger, Bonnytown.
John Trotter, farmer at Stacks.
Robert Taylor, residing at Blackness.
George Turnbull, farmer at Northbank.

City of Edinburgh.

Robert Fraser, jeweller in Edinburgh.
Thomas Richardson, merchant-tailor there.
David Whitelaw, watch-maker there.
Peter Peddie, trunk-maker there.
William Trotter, upholsterer there.
Alexander Russell, coach-maker there.
John Inverarity, upholsterer there.
George Yule, merchant there.
Alexander Ainslie, saddler there.
John Steel, confectioner there.
James Innes, gunsmith there.
Daniel Forrest, hosier there.
Peter Savers, saddler there.
George Hunter, merchant there.
William Ross, tailor there.
Charles M'Lean, draper there.
John Laing, saddler there.
John M'Pherson, tailor there.
Francis Davidson, confectioner there.
William Cooper, boot-maker there.
William Dumbreck, hotel-keeper there.

Town of Leith.

John M'Kenzie, merchant in Leith.
Archibald Cleghorn, corn-merchant there.
Thomas Morton, ship-builder there.
Robertson Paterson, painter there.
Charles Robertson, merchant there.
John Sanders, agent there.
John Glover, wright there.

AD. GILLIES.

D. MONYPENNY.

DAVID DOUGLAS.

Lord Advocate.—From certain circumstances, I find it proper to move the Court to desert the diet against John Keith *pro loco et tempore*. He will therefore be committed to prison upon a new warrant.

[This motion was accordingly agreed to.]

Lord Justice Clerk.—William Edgar, what do you say to this indictment?—Are you guilty or not guilty of the charges contained in it?

William Edgar.—Not guilty, my Lord.

Mr. Cranston.—I am of Counsel in this case

for the prisoner at the bar. The indictment, which your Lordships have just heard read, charges the prisoner with a capital offence, that of administering an oath purporting or intending to bind the takers to commit the crime of treason.

My lords, this is not a point of ditty recognized by the ancient and common law of Scotland; neither the nature of the offence itself, nor the manner in which it is to be charged, is pointed out by any precedents or authorities familiar to your Lordships. It is an offence recently introduced by a special statute; and, so far as I know, no trials have taken place hitherto upon that statute in Scotland, according to your forms.

It will be admitted, that this crime is of a nature peculiarly delicate. The life of the prisoner at the bar may depend on the construction to be put on words alone, without reference to overt acts by which they may receive a clear and unambiguous interpretation. To administer an oath without judicial authority is perhaps not a very commendable practice,* and in a moral point of view it may sometimes be improper, as tending to lessen the obligation of an oath, when thus applied to frivolous or improper subjects, or on frivolous and improper occasions. But, my lords, at the same time, it is not in itself an illegal thing† it is prohibited by no law; and I understand, and am well informed, that it is a common

* Lord Coke says (3 Inst. 165) "Oaths that have no warrant by law, are rather *novæ tormenta quam sacramenta*; and it is an high contempt to minister an oath without warrant of law, to be punished by fine and imprisonment."

The court of King's Bench has often reprehended, and discouraged as much as possible, the taking of voluntary affidavits by justices of the peace, in extrajudicial matters. In the case of *Bramah v. The—Fire Insurance Company*, Mich. T. 1800, in B. R. Lord Kenyon C. J. said "He did not know but that a magistrate subjects himself to a criminal information for taking a voluntary extrajudicial affidavit," 3 *Chetwynd's Burn*, 529.

"It is much to be questioned," says Mr. Justice Blackstone, "how far any "magistrate is justifiable in taking a voluntary affidavit in any extrajudicial matter, as is now too frequent upon every petty occasion: since it is more than possible, that by such idle oaths a man may frequently in *foro conscientie* incur the guilt, and at the same time evade the temporal penalties, of perjury." 4 *Comm.* 137.

It must be regretted that the highly improper practice of administering what the learned commentator terms "idle oaths," should be still continued by any magistrates, notwithstanding the reprehensions contained in those books with which they are generally supposed to be acquainted.

† See the preceding note, and the observations of Le Blanc J. in *Eaton's case*, ante, Vol. 10, p. 1609.

and daily practice. It is practised in many associations and fraternities; for example, in masonic meetings, when there is not the least intention on the part, either of the persons who administer, or of the persons who take the oaths, on the one part to impose, or on the other to undertake an unlawful obligation. To make a common practice of this nature the ground of a capital punishment, when the guilt or innocence of the act depends on the interpretation of the mere words used, may appear not perhaps altogether in unison with the mild and equitable spirit of British jurisprudence. Your lordships are well acquainted with the statute 1. Mary, chap. 1st, which swept away from the law that mass of constructive treasons by which it had been previously polluted—a statute held by the nation at the time it was enacted, as one of the greatest blessings ever conferred by the legislature, and still looked up to by their posterity with admiration and gratitude. Though constructive treason was thus abolished, yet the statute upon which the present indictment is founded tends to introduce a capital felony, which, though not punished as treason, is yet punished with death, the *ultimum supplicium* of the law.

This statute was no doubt passed at a time when bands of armed men were committing every species of atrocity, when they were burning, robbing, and murdering, and in particular when they were compelling persons by force to swear oaths, unquestionably and clearly imposing an obligation to commit felonies.* In this state of things, a speedy and efficacious remedy was necessary; and no doubt this statute was passed with the best intentions, and may have been productive of the most salutary consequences. All this being allowed, yet considered as a standing rule, incorporated in the criminal law of Scotland, and applied to other occasions than those contemplated by the legislature, it was not perhaps penned with all the caution requisite, and may involve principles which it would not be very safe to admit permanently into our system of jurisprudence. But it is not your lordships province to judge of the merits of the enactment, and far less am I entitled to pronounce an opinion upon that subject. It makes part of the statute law of Scotland, and that is enough. But although I am not entitled to inquire into the expediency of the law, it is my right, and it is my duty, to inquire in what manner the words of it shall be construed—in what manner, being part of the criminal law of Scotland, it shall be applied and accommodated to our form of judicial proceedings. And, after fully considering the subject in this more limited view, I trust I shall be able to satisfy your lordships that the libel in this case is not relevant, according to the principles of the criminal law of Scot-

* See the debate in the House of Commons on the motion for the introduction of this statute 23 Hans. Parl. Deb. 81.

land. This is a subject of the utmost importance, and to which the attention of your lordships is now most earnestly requested.

In this indictment the major proposition sets forth, that, "Albeit, by an act passed in the fifty-second year of his present Majesty's reign intituled, 'An act to render more effectual an act passed in the thirty-seventh year of his present Majesty, for preventing the administering or taking unlawful oaths,' it is, *inter alia*, enacted, That every person who shall, in any manner or form whatsoever, administer, or cause to be administered, or be aiding or assisting at the administering of any oath or engagement, purporting or intending to bind the person taking the same to commit any treason or murder, or any felony punishable by law with death, shall, on conviction thereof by due course of law, be adjudged guilty of felony, and suffer death as a felon, without benefit of clergy." There are then other clauses of the statute recited in this major proposition.

I have no objections to make to the major proposition of this indictment. It is correct in reciting the clause of the act constituting the crime which is now to be tried; and, therefore, in considering this proposition, the only thing to be attended to is, the nature of the crime which is here stated to be punishable with death. It is the administering an oath, "purporting or intending to bind the person taking the same to commit treason or murder, or any felony punishable with death."

Upon reading this clause, your Lordships will be satisfied, that it is not sufficient to constitute this crime that an oath was administered—it is not sufficient that the person administering that oath had criminal intentions at the time—or that he was engaged at the time in criminal practices—it is not enough that the person who takes the oath intends to commit, or is in the course of committing criminal practices. All that is insufficient to constitute the crime here set forth. It is necessary,—it is the essence of the crime,—that the oath administered shall itself purport or intend to bind the taker to commit the crimes specified in the statute. It is quite possible that two persons may be actually engaged in committing the crime of treason, and while thus occupied, that one of them, with a view of practising a deceit on those who were present, and of ensnaring them into the traitorous conspiracy, should administer an oath to his associate, under the pretence of binding him to commit the treason. But if that oath did not in fact impose the obligation, it could not warrant a conviction under this statute. It might be an overt act of treason, and all the persons present, he who administered the oath, he who took the oath, and the spectators, might be punishable as traitors, yet still an indictment under the present statute could reach none of them; for to make the statute apply, it is essential that the oath administered purports or intends to bind the party taking it to

commit treason or felony. An oath not containing that obligation, however nefarious and detestable in itself, may be the ground of a different prosecution, but it cannot be the ground of the charge now before your lordships. All this is too clear to require any illustration; it must be manifest to every one who reads the words of the statute.

Having said thus much on the major proposition of the indictment, we now come to consider the minor proposition. Here, as in other cases, there are two subjects of inquiry; 1st, Whether the facts set forth in the minor amount to the charge in the major? and, 2nd, Supposing that they do, whether they are specified with that precision and minuteness which are required, by the law of Scotland, to constitute a relevant indictment?

The minor begins in these terms: "Yet true it is and of verity, that you, the said William Edgar and John Keith, are both and each, or one or other of you, guilty of the said crimes, or of one or more of them, actors or actor, or art and part: In so far as you, the said William Edgar and John Keith, having, at Glasgow, and in the vicinity thereof, in the course of the months of November and December 1816, and of January and February 1817, wickedly, maliciously, and traitorously conspired and agreed, with other evil-disposed persons, to break and disturb the public peace, to change, subvert, and overthrow the government, and to excite, move, and raise insurrection and rebellion, and especially to hold and attend secret meetings for the purpose of obtaining annual parliaments and universal suffrage, by unlawful and violent means, did, then and there, both and each, or one or other of you, wickedly, maliciously, and traitorously, administer, or cause to be administered, or did aid or assist at the administering, to a great number of persons, an oath or engagement, or an obligation in the nature of an oath, in the following terms, or to the following purport."—And then the words of the oath are recited.—"In awful presence of God, I, A B, do voluntarily swear, That I will persevere in my endeavouring to form a brotherhood of affection amongst Britons of every description, who are considered worthy of confidence; and that I will persevere in my endeavours to obtain for all the people in Great Britain and Ireland, not disqualified by crimes or insanity, the elective franchise, at the age of twenty-one, with free and equal representation, and annual parliaments; and that I will support the same to the utmost of my power, either by moral or physical strength as the case may require: And I do further swear, that neither hopes, fears, rewards, or punishments, shall induce me to inform on, or give evidence against, any member or members, collectively or individually, for any act or expression done or made, in or out, in this or similar societies, under the punishment of death, to be inflicted on me by any member or members of such societies. So help me

God, and keep me steadfast." And it is said in the indictment, that this oath, or at least an oath of the same purport, was administered.

It is here set forth, that the prisoner at the bar was in the course of committing certain heinous crimes. These crimes, your lordships will observe, are not laid as a substantive charge against the prisoner; and it is impossible that they should be so laid in this indictment, for a prisoner can be charged with nothing in the minor, but what amounts to the crime laid in the major proposition. It is said, that the prisoner having committed those crimes, did administer the oath. But those crimes are not laid with a view to inflict punishment on him for them, though perhaps they are stated in *modus probationis* of another crime. It is incompetent in the minor proposition of the indictment to say that the prisoner is guilty of a felony not charged in the major, in order to punish him for that felony. The charge in this indictment is for administering an unlawful oath; and whatever facts connected with a separate crime are set forth in the minor only, they make no part of the charge against the prisoner at the bar.

I trust I shall afterwards show, though it is not at present the time to make inquiry into this, that however atrocious the crimes here affirmed to have been committed by the prisoner may be, as they are in themselves totally irrelevant to infer the crime with which he is really charged, so at the same time it is incompetent, according to the law of Scotland, to bring any proof of those crimes. This I shall postpone for after-consideration, proceeding, in the mean time, to consider the oath which was administered, which is said to purport an obligation on the taker to commit treason.

The oath is in these words:—"In awful presence of God, I, A B, do voluntarily swear, That I will persevere in my endeavouring to form a brotherhood of affection amongst Britons of every description, who are considered worthy of confidence; and that I will persevere in my endeavours to obtain for all the people in Great Britain and Ireland, not disqualified by crimes or insanity, the elective franchise, at the age of twenty-one, with free and equal representation, and annual parliaments; and that I will support the same to the utmost of my power, either by moral or physical strength, as the case may require: And I do further swear, that neither hopes, fears, rewards, or punishments, shall induce me to inform on, or give evidence against, any member or members, collectively or individually, for any act or expression done or made, in or out, in this or similar societies, under the punishment of death, to be inflicted on me by any member or members of such societies. So help me God, and keep me steadfast."—Then it is said, "Which oath or obligation did thus purport or intend to bind the persons taking the same to commit treason, by effecting

by physical force the subversion of the established government, laws, and constitution of this kingdom."

Here the prosecutor recites the oath, and says that it purports an obligation on the person taking it to commit treason, by effecting by physical force the subversion of the established government, laws, and constitution of this kingdom. But it is not enough that the prosecutor says it has that purport. If, on considering the oath itself, your lordships are of opinion that it does not imply what the prosecutor alleges, his mere averment that it is an oath of a certain purport will not make it so; and he is not entitled to have that question sent to the jury, for that would be taking from the Court the question as to the relevancy of the indictment.

Suppose in an indictment for perjury, the prosecutor, after alleging in general terms that this specific offence has been committed, proceeds in the minor proposition to give the deposition of the prisoner in detail, and afterwards to contrast it with what he alleges to be the truth, asserting that there is such a manifest discrepancy as necessarily implies the commission of the crime charged—still his mere assertion on this subject will not be sufficient; and if the Court shall be satisfied, on comparing the alleged truth with the alleged falsehood, that there is not an absolute contradiction between them; in other words, that what the prisoner has sworn may be reconciled with what the prosecutor says he ought to have sworn, you will not hold the indictment to be relevant, nor send the charge to a jury to be tried. That being the case, if your lordships, on reading this oath, be of opinion, that it does not purport what the public prosecutor says it purports, then I say this is an irrelevant libel.

It is true that, besides the word "purporting," there is another word used here, "intending." What is the signification of the word *intending* I shall afterwards consider, and it is of material importance to this case; but let us see, in the first place, what is the signification of the term *purport*. This term, as every body knows, is applied to denote the meaning of words as gathered from the words themselves—the meaning as *expressed* in contradistinction to the meaning which may be *conjectured* from extrinsic facts or circumstances. Look then at the words of the oath, and see if it purports what the prosecutor says it does. No man who reads it can say so. The words of the oath are, "I will persevere in my endeavouring to form a brotherhood of affection amongst Britons of every description, who are considered worthy of confidence." Nobody will pretend to say that there is an obligation to commit treason here. There is an obligation to form a brotherhood of affection. All the subjects of this country are brothers; and it is becoming that they should dwell together in unity. This cannot purport any thing to be done that is improper. The

oath then goes on, "That I will persevere in my endeavours to obtain for all the people of Great Britain and Ireland, not disqualified by crimes or insanity, the elective franchise, at the age of twenty-one, with free and equal representation, and annual parliaments." There are few persons at present, who are qualified, either from their natural parts or information, to judge of subjects of this kind, who will be of opinion that either annual parliaments or universal suffrage would be of advantage to the inhabitants of this country, or would conduce to any thing else than anarchy in the first instance, and despotism in the end. But although this be true, it is well known to your lordships, that it is the privilege of every subject in this country, to form his own opinion on subjects of a political nature; and having formed his opinion, he may make use of lawful means to have such changes produced in the constitution or government of the country as he may think expedient. The legislature has at different times altered the duration of parliament and the mode of suffrage; and if any person believes that annual parliaments and universal suffrage would be of benefit to the country, it is no crime to use lawful endeavours to obtain these objects, which can only be obtained lawfully by an act of the British parliament itself; and you know, that petitions for such objects are daily presented to parliament, and daily received.

It is said in the oath, "I will persevere" in these endeavours. If the endeavours are lawful, the persevering in them is no crime at all. It is not said in the oath, or in any part of the indictment, that the prisoner was engaged in unlawful projects for these purposes. It is said, indeed, in the indictment, that the persons who administered the oath were engaged in a treasonable conspiracy; but there is no specification of circumstances to evince the prisoner's accession to this conspiracy, nor is the offence of conspiracy any part of the substantive charge made against him in the indictment. That being the case, the oath or obligation to endeavour to obtain annual parliaments and universal suffrage, is an obligation in itself perfectly innocent. Your lordships will not say that these endeavours are unlawful, nor will you impute improper motives to the party in prosecuting them, for you are not authorized to make such an intendment. When a person promises to use every endeavour to accomplish an object, the generality of this expression will never extend it to unlawful endeavours—it must be construed with the common and necessary limitation, that he will use every endeavour which he may lawfully use. If this principle of construction were not adopted, the oath of abjuration itself might be converted into an obligation to commit treason. "I do faithfully promise, to the utmost of my power, to support, maintain, and defend the succession of the Crown," purports, that I will support, maintain, and defend it by lawful means—but not by unlawful means, not by felony, murder, or treason.

The oath in the indictment then goes on to say, "that I will support *the same* to the utmost of my power, either by moral or physical strength, as the case may require." Support what? Here is an ambiguity in the oath; and an ambiguity which shews how hazardous it is to admit constructive treasons reared upon words uttered by persons not critically acquainted with the imperfect instrument of language. Interpret this passage any way you chuse, it will not amount to any thing criminal. Even supposing that it binds the party taking the oath to obtain the objects which are specified in it by moral or physical force, what is the result? it is, that lawful objects are to be obtained by lawful measures. No person can be blamed for exerting his utmost efforts under that limitation. Or take the only other construction which can be put upon this clause of the oath, and suppose the party to swear, that he will support annual parliaments and universal suffrage to the utmost of his power, *when these objects shall have been obtained*; that he will use his best endeavours to continue and perpetuate these imaginary blessings, when they shall once have been procured for the country. Is this an unlawful obligation? It certainly is not. If lawful objects are obtained in a lawful manner, then, it is the duty of good subjects to support and continue them. So that whatever construction you put upon this clause of the oath, whether you suppose it to refer to enterprises for obtaining what does not already exist, or for supporting improvements after they shall be established by law, it is in either case perfectly innocent.—With regard to the terms "moral and physical strength," I may remark, a man may support what is lawful either by the one or the other, and yet be free from blame. The individuals attempting to procure annual parliaments and universal suffrage, might employ their moral strength for that purpose by using arguments; or their physical strength, for instance, by being despatched with letters and messages, or going about to solicit members of parliament for their support. A person may erect hustings, and may keep off the rabble—he may employ his physical force in twenty different ways without doing any thing that is unlawful.

The oath concludes, "And I do further swear, that neither hopes, fears, rewards, or punishments, shall induce me to inform on, or give evidence against, any member or members, collectively or individually, for any act or expression done or made, in or out, in this or similar societies, under the punishment of death, to be inflicted on me by any member or members of such societies. So help me God, and keep me steadfast." I admit at once, it is improper for any person to undertake an obligation not to give evidence. But that is not an obligation to commit treason: it is only to commit a misdemeanor with which we have here no concern.

Not one of those clauses of the oath can support the major proposition in the indictment.

Read the oath from beginning to end, and say, does it impose any obligation to commit treason? Read the words a hundred times over, and still it will be impossible to say that such is its purport. For it may be explained to mean an obligation to endeavour to obtain lawful objects, and cannot fairly be explained to mean any thing else. I am speaking of the purport of the oath, and not of what might be the intention of the parties at the time; and if that oath does not purport treason, there is an end of the present indictment.

The public prosecutor immediately adds, "Which oath or obligation did thus purport or intend to bind the persons taking the same to commit treason, by effecting by physical force the subversion of the established government, laws, and constitution of this kingdom." No doubt the prosecutor makes that averment. But I say the averment is utterly unfounded, and that the oath does not purport the obligation which he says it purports. It is for your lordships to judge whether it does so or not; and if you are of opinion that it does not, then nothing that the prosecutor affirms on the subject can have the smallest influence, as he is not entitled to go to the jury, and leave it to them to determine what is the purport of the oath; for that would be to take the relevancy of the indictment out of your hands into his own.

The prosecutor has given you a gloss or comment on the oath, and you will judge if it be correct. The civilians have a nickname, I forget what it is, for a gloss which extracts a meaning from the text exactly the reverse of what it naturally bears. This gloss is precisely of that nature.

In the oath there are the words, "I will support the same to the utmost of my power, either by moral or physical strength." In the prosecutor's comment the word *force* is substituted for *strength*. That may be thought immaterial, and to have proceeded from inattention, but it is not so. It has been introduced in order to insinuate something different from what the oath purports. Strength in common language applies to bodily exertion. Force applies to an assemblage of armed persons. Although you can speak of an armed force, you cannot speak of an armed strength; a circumstance which shows that the meaning of the words is not the same. The prosecutor by this clause means to insinuate, that the parties were to endeavour by an armed force to obtain their objects; a purpose which cannot be inferred from the words of the oath at all. It is further said, that the oath was to bind to the "subversion of the established government, laws, and constitution of this kingdom," but there is nothing from the beginning to the end of the oath about effecting any thing. The parties bound themselves to use endeavours to obtain annual parliaments and universal suffrage; and these, if obtained in a lawful manner, are not a subversion of the government, laws, and constitution of the kingdom. The gloss, there-

fore, has extracted a meaning from the text exactly the reverse of what the words bear. The public prosecutor cannot be allowed to do this; and the libel on that account is irrelevant.

But I go further, and I request you to observe what may not at first sight be apparent, but which, on full consideration of the law, will immediately occur to all of you, that even on the supposition that this oath did purport what the public prosecutor says it does, yet it would not purport an obligation to commit treason. For I maintain, that persons bound to effect by physical force the subversion of the established government, laws, and constitution of the kingdom, are not necessarily bound to commit treason. It is well known to your lordships that there are two great species of treason in law. We shall dismiss from our consideration at present a great many treasons, such as debasing the coin, murdering judges, &c. with which the public prosecutor does not and cannot pretend that this oath could have any connexion whatever. There are just two kinds of treason specified in the statute of Edward 3rd, to which it could possibly refer; 1st, compassing the king's death; 2nd, levying war against him. I shall afterwards speak of a third treason, established by a subsequent act, the 36th of the king.

In order to make an indictment for either of these two kinds of treason relevant, it is not enough to say that the party intended to effect, or has effected by force, the subversion of the government, for that is not necessarily compassing the death of the king, or levying war against him. Though some of the acts performed in subverting the government might be overt acts of treason, they are not necessarily so.

In order to establish the first kind of treason, two things are necessary. You must have a wicked imagination in the mind, namely, the compassing of the king's death; and you must have overt acts, which the law considers as proof sufficient to establish that imagination. But it is not laid here that the oath bound those who took it to compass or imagine the death of the king. I cannot illustrate my argument as it applies to the case before you, better than by appealing to an extreme case, with which you are all well acquainted—the trials of the regicides in the 17th century. You will recollect how the indictments were there laid "for compassing and imagining the death of the king;" and the overt act of that treason was cutting off the head of the king. It would not have been relevant to have merely charged the act of putting the king to death, as the crime of treason—the crime consisted in the imagination of the heart; the death of the king was the evidence that that imagination existed. In the same manner, the subversion of the laws and constitution of the kingdom is not treason, though it is probable in effecting that subversion overt acts may be committed, which afford evidence of treason.

The other species of treason which I mentioned, was levying war against the king. To constitute that crime, the use of physical force is the subversion of the laws or constitution of the kingdom is not sufficient. One of two things is necessary; either, on the one hand, the persons using that force must be assembled in the guise of war, as it is expressed in the Norman jargon of the law, *arriati modo guerrino*; they must proceed *sub specie belli*, armed with warlike engines, with colours displayed, and to the sound of trumpets and drums: or, on the other hand, there must be so great a multitude assembled, that their numbers may compensate for the want of the pride, pomp, and circumstance of war. Certain persons assembling together and prosecuting an illegal object by force, does not necessarily constitute a levying of war against the king,—unless it have the characteristics I have mentioned, it is not treason. I am unwilling to detain you in a case of this kind by quoting authorities on the subject. I could quote a great many, but I shall content myself with referring you to Hale and Foster, in their chapters on this subject.

There is a third treason, that of conspiring to levy war in order to accomplish certain objects, as to put the king under restraint, to intimidate parliament, or force the parliament to enact certain laws. This treason was introduced by the 36th of the king, c. 7.*

I ask, then, whether this oath, granting that it purports what the prosecutor affirms it purports, imposes an obligation to commit any one of these three distinct species of treason? I have already stated the reasons, by which your lordships must be convinced that it does not bind the taker to compass or imagine the death of the king. Just as little does it bind him to levy war against the king, or to conspire to levy war against him.

I have said that force may be used, nay, successfully used, to subvert the constitution, and yet no war be levied against the king. I shall give an instance of this, which appears to me decisive on the merits of the present question. Suppose that the House of Lords (which of course they never will do) should pass a bill to abolish the House of Commons, or their own House, as a branch of the Legislature (and if such bill passed into a law, it would effect the complete subversion of the constitution): Suppose, in the next place, that this bill, when carried to the House of Commons, should divide the House equally, and of consequence its fate should depend on the casting vote of the Speaker. In those circumstances, if twenty or thirty individuals, not armed *modo guerrino*, but with sticks in their hands, should go down and compel the Speaker by threats or violence to vote for this bill,—the bill having afterwards received the royal assent, would operate as the subversion of the constitution, and it would be a sub-

version accomplished by force; yet no lawyer will maintain that this is a case of high treason, that it is a case of compassing the king's death, or of levying war against him, or of conspiring to levy war.

I repeat, then, that although this oath did purport what the public prosecutor says it does, but which most certainly it does not, still it would not support the charge in the major proposition. If the prisoner was accused of having subverted the constitution by force, could that charge go to trial as a charge of high treason? assuredly it could not; and for the same reason a charge of having administered an oath purporting to bind the taker to subvert the constitution by force, is not a charge of having administered an oath binding him to commit treason.

I have now considered the oath as "*purporting*" to bind. That word, as I have endeavoured to explain it, and I trust I have soundly explained it, implies nothing more than the meaning of the oath as it may be gathered from the words set forth. But then the public prosecutor says that this oath purported, or intended; and the question comes to be, Does the use of the word *intend* make any difference? I apprehend it does not; for the *intendment* of a writing or speech in the ordinary case is just the same thing as its *purport*. You will observe the Act of Parliament does not say, if the person administering the oath intends to bind to the commission of treason, that his intention shall infer the crime. This is not the meaning of the statute; for it requires, that there shall be *an oath or engagement "intending" to bind, &c.* It is the *intendment* of the oath, not of the person, which the statute mentions; and, therefore, though it were perfectly clear that the prisoner administered this oath, and that it was his intention to bind the party taking it to commit treason, yet that is not enough, if the oath itself do not bind to that effect. Now, that cannot be inferred from the words of the oath; for if you interpret them fairly, they mean nothing but what is, or at least may be, perfectly innocent.

But then, perhaps, we shall be told that the public prosecutor will prove, by facts and circumstances, that the *intendment* of the oath is different from the *purport*; and it occurred to me, that he has some such idea, from the circumstance that he has drawn the narrative of his minor proposition in the way in which he has. I have various objections to this view of the subject, to which I must call your particular attention.

In the first place you will observe, that in the libel itself the prosecutor gives up the charge of *intending*, and relies on that of *purporting* altogether; for in the close of the libel (where, though the same detail is not necessary, yet the crime must be set forth with the same critical accuracy) he says, "At least, times and places foresaid, the said oath or engagement, or an oath or engagement to the same *purport*,

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* Made perpetual by Stat. 57 Geo. 3rd c. 6.

was wickedly, maliciously, and traitorously administered, or caused to be administered," &c. He does not say it was an oath to the same *intent*; and therefore, unless he establishes that an oath of this purport was administered, he does nothing at all. But this is not the objection on which I chiefly rely.

It is an established principle in the law of Scotland, that the minor proposition shall be laid specifically, and that every material circumstance shall there be stated which is to be made the subject of proof against the prisoner. The prosecutor is not at liberty to make out the intendment of this oath from facts and circumstances to which he only alludes in a vague manner; the libel is defective unless these facts and circumstances are distinctly specified. Would it be sufficient in an indictment under this statute to say, that the prisoner, at the times and places mentioned, administered the oath of allegiance, but under cover of that oath he intended to bind the party to commit certain crimes? No. It would be necessary for the prosecutor to set forth what were the facts and circumstances which established the criminal quality. In a trial for a calumnious or seditious libel, would it be enough to specify that the prisoner repeated the first stanza of Chevy Chase, without specifying how it happened that words having a natural, obvious, and innocent meaning, were in reality directed to a totally different and criminal object? The prosecutor must set forth the facts and circumstances from which he draws his inference, otherwise the indictment is not laid with that minuteness which the law requires. But your lordships will observe, that no fact is here specified from which such an inference can be deduced. It is stated in the narrative, that the prisoner "having wickedly, maliciously, and traitorously conspired and agreed with other evil disposed persons to break and disturb the public peace, to change, subvert, and overthrow the government, and to excite, move, and raise insurrection and rebellion, and especially to hold and attend secret meetings, for the purpose of obtaining annual Parliaments and universal suffrage, did then and there wickedly, maliciously, and traitorously administer, or cause to be administered, or did aid and assist in the administering, to a great number of persons, an oath or engagement, or an obligation in the form of an oath," &c. In the first place I say, that supposing the prisoner committed all these crimes, it is no necessary inference from that hypothesis that he intended to administer an unlawful oath. They do not create the smallest presumption to that effect; for a man may be engaged in treason himself, and yet have no intention to impose an oath binding his associate to commit treason.

But there is another view of the case. Supposing it competent from facts and circumstances to prove that an oath which does not purport any obligation of the nature libelled,

was nevertheless intended by the parties to impose that obligation, yet the facts and circumstances here resorted to are of a kind which precludes the prosecutor from making use of them for that purpose. If the narrative of this indictment were to be proved, it would infer that the prisoner had committed treason; but will your lordships permit the lord advocate to prove that a man has been guilty of treason in order to convict him of a felony. I submit that this is manifestly incompetent. It is a general rule in criminal law, and is so laid down by Mr. Burnet in his work upon that subject (p. 611). His 18th canon upon evidence is in these words: "One crime cannot be proved by evidence as to another. If A be charged with three acts of theft, a proof of two of them cannot be offered in evidence of his guilt as to the third." Your lordships will see at once the principle upon which this rule is founded, and indeed it is afterwards stated by the learned author whom I have just quoted. He says, "it is to avoid the risk of a jury being influenced by the proof of one crime in judging of the proof of another." It would be most dangerous to the subjects of this country were it held, that because a man had perpetrated one crime of which he was not accused, the jury might conclude that he had perpetrated another of which he was accused. This may perhaps be a moral, but it is no legal ground of inference. If I know that my servant has stolen an article from me on one day, and if another is missed the day following, I may very naturally conclude that he who stole the first stole the second also. But if the servant was tried for the second theft alone, your lordships assuredly would not allow the prosecutor to go into evidence of the first. It could answer no purpose, but the improper purpose of creating a prejudice in the mind of the jury. It is therefore a salutary and expedient rule, and a rule which I trust will always be received, that one crime cannot be proved in order to establish another. As the prisoner therefore is charged with having administered an unlawful oath, and as for that crime and for no other a conviction is demanded, the prosecutor cannot be allowed to prove in support of that charge, that he committed another crime, namely that of treason. Nothing could be more unfair or more contrary to the principles of criminal law.

Inaccurate opinions have sometimes been received on this subject. I have used the argument myself, that every thing is evidence which tends to produce belief in the minds of the jury. That is not the law of Scotland or of any civilized country. The law judges what should be allowed to produce belief in the jury, and, for the reasons which have just been assigned, it will not allow evidence of one crime to be used as evidence of another. Though the prisoner was convicted of being a traitor, the highest crime which can be committed in any state, that circumstance could

not be permitted to have the smallest influence in convicting him of a lesser offence not supported by evidence applicable to itself.

There is another reason why the narrative of the minor proposition cannot be competently sent to proof. It is there stated that the prisoner was engaged in a treasonable conspiracy, but it is not stated with whom he was engaged in that conspiracy. Nay, it is not stated that the other conspirators were persons to the prosecutor unknown. Even upon the supposition, therefore, that this charge had been laid in the major, which it is not, it could not be sent to proof, because the prosecutor has not given that information with regard to it, which according to the forms of the law of Scotland he was bound to give, that the prisoner might be enabled to prepare his defence. Where a conspiracy is charged against an individual, the other persons conspiring must be specified, or at least it must be stated, that those persons are unknown to the prosecutor, if even that is sufficient.

If that remark is applicable to the charge of conspiracy, how much more so is it to that of treason? To convict a person of treason, many requisites must occur which are not found here. No man can be put upon trial for that crime unless a bill is found against him by a Grand jury; and after the bill is found, many forms must be observed unknown to the criminal law of Scotland in other cases. For example, the prisoner is entitled to challenge a certain number of his jury peremptorily, and without cause shewn. He has various other privileges unnecessary to be stated. But none of these privileges have been allowed to the prisoner here, because he is put upon his trial for a felony. It is impossible that your Lordships will allow him to be tried for treason by our forms of procedure, when it is enacted, by special statute, that treason can only be tried by the forms of the law of England.

It is no answer to this argument, for the prosecutor to say, we are going to try the prisoner for treason, but we are not to punish him for treason. We ask for no other punishment but that which is applicable to the crime laid in the major proposition of the indictment. If the jury find the prisoner guilty of treason, though he escape the punishment, his character is blasted, he is a convicted traitor, and he suffers an injury which the prosecutor is not entitled to inflict. On the other hand, suppose him to be acquitted under this indictment, the acquittal is of no benefit to him, for not only might his character be ruined, but he may be again brought to trial for treason in a regular way.

Lord Advocate.—He cannot be again brought to trial.

Mr. Cranstoun.—The lord advocate thinks differently from me, but he is wrong. If the prisoner be acquitted of administering the unlawful oath, that act cannot be laid as an overt act of treason in an indictment for that crime. But here treasonable practices are stated for the purpose of proving, that the oath admini-

stered imposed an obligation to commit treason. Now the lord advocate cannot be prevented from trying the prisoner for these practices as treason, although the prisoner should be acquitted of the present charge. The words of the act are "Provided also, and it is hereby declared, that any person who shall be tried and acquitted, or convicted of any offence against this act, shall not be liable to be indicted, prosecuted, or tried again for *the same offence or fact* as high treason or misprision of high treason."

From these words it appears, that after a trial on this indictment the prisoner cannot be tried for treason on the ground of having administered this oath, but he may notwithstanding be tried for treason on account of any one of the acts which his lordship narrates in the minor proposition, as evidence that the prisoner and his associates were engaged in treasonable practices.

This being the case, what would be the result of a trial under this indictment, supposing that the prisoner is acquitted? It would be just a precognition, and what is more, a public precognition taken, for the purpose of convicting him afterwards of high treason. And as he might be tried twenty times for administering unlawful oaths, all these trials might be with no other view than that of trying him for high treason at last. I put it to your lordships, if oppression of this kind could be endured in this country,—if there would not be an end of all liberty and all security?

I lay it down therefore as clear law, that one crime cannot be used as proof of another. There is nothing set forth in this libel in order to prove the *intent* of the oath as contradistinguished from its *purport*, except facts which infer other crimes, and which, on that account, cannot be admitted to proof. The whole narrative of the minor proposition must be blotted out as incompetent, and that being done there is nothing left but the words of the oath, and these words do not purport any obligation to commit treason. The prosecutor may aver the contrary—he may say, that whatever may be the apparent purport, the real intendment was an unlawful obligation: but if he makes this averment something further is necessary; he must state specifically the facts and circumstances by which he is to prove, that words, innocent in themselves, were used with a guilty intent; and these facts and circumstances must be relevant to ground that inference, and competent in themselves to be proved. Further, as already said, it is not the intention of the parties, but the intendment of the words which must be criminal.

But if the narrative of the minor proposition be struck out, and I have shown that it must be so, then there is no specification of facts whatever to establish an intendment different from the purport of the oath. What specification is necessary in the minor proposition of a criminal indictment according to the law of Scotland? All our authorities say that

the minor proposition must set forth a full and accurate detail of all the circumstances material to the case. But if the lord advocate attempts to extract and elicit from innocent words a different meaning from that which they obviously bear, and does not specify the circumstances from which he infers that hidden meaning, then the minor proposition is imperfect for want of specification, and the libel is irrelevant.

I had formerly occasion to refer your lordships to the practice in trials for perjury: and it appears to me that there is a great affinity between trials for that crime, and the present. Perjury consists in taking an oath which purports falsehood: the present crime consists in administering one which purports an unlawful obligation. In both there is the use of an ordinary solemnity, with the criminal intention in the one case to deceive, and in the other case to bind to the commission of a crime. The crimes are analogous. In a case like the present, which is new, it is most desirable to refer to analogous cases, in order to gather what are the rules of proceeding. Let us consider then what is your proceeding when you try a person on a libel for perjury. Mr. Hume, in stating what are the specifications necessary in a libel for perjury, observes, that "it is more especially requisite, that in all process for perjury the prosecutor be not allowed to lay his libel generally, or in ambiguous terms; since otherwise he would take the cognizance of the relevancy of the charge to himself, out of the hands of the Court, to whom of right it belongs. He has to explain, therefore, wherein it is that the falsehood lies, and must support (or as we say, *qualify*) his charge with such a statement of the circumstances of the fact, as justifies his averment of a false oath having been taken, and shall ground a clear inference (if they be proved) concerning the situation of the panel's conscience on the occasion." It thus appears, that in a charge of perjury, in order to make the libel relevant, it is not enough to assert that the prisoner has sworn a false oath. The prosecutor must point out in detail the circumstances on which he rests his averment, that what was sworn is false. If that be the case in a trial for perjury,—in the analogous crime now in question, if the prosecutor libels words in themselves innocent, he must specify facts relevant and competent to be proved, in order to make out the proposition that these words were used with a guilty intendment—an intendment understood by both parties. Therefore unless you require a specification of facts, which I apprehend is essentially necessary to extract a guilty intendment from the words of this oath, in themselves innocent, you depart from one of the best established rules of the law of Scotland. What is said by Mr. Hume as to trials for perjury, is equally applicable to a trial under this act.

I have already taken occasion to observe, that one of the most valuable statutes in our code is the statute of 1st Mary, cap. 1. It is

in our code, for it is a law regarding treason, and of consequence introduced along with all the other laws of England upon that subject by the 7th Anne, cap. 21. I pray your lordships to attend to the preamble of that statute of the 1st Mary. "Forasmuch as the state of every king, ruler, and governor of any realm, dominion, or commonalty, standeth and consisteth more assured by the love and favour of the subjects toward their sovereign ruler and governor, than in the dread and fear of laws made with rigorous pains and extreme punishment for not obeying of their sovereign ruler and governor: And laws also justly made for the preservation of the commonweal, without extreme punishment or great penalty, are more often for the most part obeyed and kept, than laws and statutes made with great and extreme punishments and in special such laws and statutes so made, whereby not only the ignorant and rude unlearned people, but also learned and expert people, minding honesty, are often and many times trapped and snared, yea, many times for words only, without other fact or deed done or perpetrated: The queen's most excellent majesty, calling to remembrance, that many, as well honourable and noble persons as other of good reputation, within this her grace's realm of England, have of late (for words only, without other opinion, fact, or deed) suffered shameful death not accustomed to nobles; Her highness, therefore, of her accustomed clemency and mercy, minding to avoid and put away the occasion and cause of like chances hereafter to ensue, trusting her loving subjects will, for her clemency to them shewed, love, serve, and obey her grace the more heartily and faithfully, than for dread or fear of pains of body, is contented and pleased that the severity of such like extreme, dangerous, and painful laws, shall be abolished, annulled and made frustrate and void." This preamble explains the extreme danger and mischief arising from laws inflicting the pains of treason on offences which are not accurately defined, and more particularly for words spoken, and accordingly the whole body of constructive treasons were swept away by that act.

Now, the statute upon which the present indictment is founded introduced a constructive felony, on which it inflicts the same punishment as that which is inflicted in treason, at least in all material respects the same. I did not read the preamble of the act of queen Mary, to throw blame on the statute now under consideration, but to show the difficulty and danger attending the application of every law of this description, as the legislature itself has clearly expressed in that preamble. But the statute having been enacted, what is the proper corrective for the evils to which I allude? I do not know what is the practice on the other side the Tweed; for I do not know the details of criminal procedure there, but I know that in Scotland the corrective is to be found in our forms of

criminal procedure; and whatever defects there may be in the law of Scotland, there are some excellencies, and one of them is that minuteness of specification which the public prosecutor is bound to observe in his indictment. The proper precaution for preventing this statute from being made a source of oppression and injustice, is to observe our forms of criminal procedure; and I maintain that one of our best forms will be neglected, if you allow a proof of the minor proposition here to go to a jury, when there is no specification in the libel to show that the words of the oath were used in a sense different from their ordinary sense. Their ordinary sense as I have endeavoured to prove, or rather as I think must be manifest at first sight, is perfectly innocent; at least it is not an obligation to commit treason. If this libel be allowed to go to trial under other judges, the administration of any oath, of the oath of allegiance itself might be made the ground of a prosecution under this statute. The author whom I have already had occasion to quote, says, that the rule of the minor proposition containing a specification of all the facts on which the charge rests, was attended to anxiously, even in the worst times. We know well what are the times to which he alludes, indeed they are pointed out by the decisions to which he refers; namely, the period between 1679 and 1688, when your books of adjournal are stained with the most atrocious murders perpetrated under the colour of law—by judges the most unprincipled that ever sat upon that bench. If in that period, and under these judges, the rule in question was not departed from even in the trial of state crimes, it will not be departed from in these liberal and enlightened days, and while your lordships preside in this Court. On these grounds, I relate to your lordships with confidence what is the genuine conviction of my own mind, that this is not a relevant indictment, and that if it be sent to a jury, a precedent will be established fraught with the greatest danger.

[Mr. Cranstoun made an apology for occupying the Court so long.]

Lord Justice Clerk.—I express the opinion of the Court, that there is no reason for such an apology. We have all heard the very able, eloquent, and argumentative pleading for the panel, with the most perfect satisfaction.

Mr. Drummond.—A very difficult task has devolved itself upon me, that of answering one of the ablest arguments which I ever had occasion to hear; and I have this impression so strongly on my mind, that unless I had some confidence in the merits of the cause which I am to support, I should feel the greatest diffidence in attempting to answer the speech of the learned gentleman. I trust, however, that the case will speak pretty strongly for itself; and my learned friend who is to follow me, will, much more ably than I

can do, supply what I may happen to omit.

The charge against the panel at the bar is for a statutory offence. He is charged with administering an oath of a particular description. The rules of law are clear with regard to the manner of describing a criminal act. The words of Mr. Hume are, "That a libel is not good, unless it give such an account of the criminal deed as may distinguish this particular charge from all other instances of the same sort of crime, and thus bring the panel to the bar sufficiently informed of that whereof he is accused."^a

If this description of the duty of the prosecutor be correct, I apprehend this indictment must clearly go to trial; for it sets forth the crime charged in a manner to distinguish it from every other instance of the same sort of crime. The criminal deed is the administering of the oath, and the oath itself is set forth in the indictment. Even if it had not been in the power of the prosecutor to obtain the terms of the oath, yet, by this statute, it was competent to him to charge its purport. But the prosecutor has fortunately had more in his power, for he has obtained the oath itself, and he has recited it at length in the indictment.

Mr. Hume proceeds afterwards to describe the manner in which the criminal deed should be set forth; and as the learned gentleman who went before me dwelt some time on this subject, I shall be under the necessity of quoting at length Mr. Hume's views of the duty of the prosecutor. [Mr. Drummond here read from vol. 3, p. 325, and subsequent passages, and maintained that the description of the offence in this indictment was sufficiently specific.]

I apprehend that the prosecutor is correct as to the times and places, and the individuals to whom the oath was administered, as no objection has been stated to the indictment with regard to these points. And, considering the particular character of this crime charged, and that it is of a secret nature, and extremely difficult to detect, I think your lordships must be satisfied, that the prosecutor has given as full and particular a description of it as the panel could expect.

This is a crime, in many respects, of a very peculiar character. It is necessary, indeed, as was correctly stated by the learned gentleman, that the oath itself should bind to the commission of treason, or of some capital felony. It is not sufficient that the party administering the oath, or the party taking it, should have treasonable, or other criminal intentions; but it is necessary that the oath itself should bind to the commission of treason, or some other crime. This was most correctly laid down by the learned gentleman, and any inference which the prosecutor may think himself entitled to draw from the oath will not be sufficient, if it do not clearly appear that the oath itself is of the precise purport necessary to inculcate the

panel on the statute founded upon in the indictment. On this part of the case I am ready to meet the learned gentleman; for it appears to me very clearly that this oath does contain an obligation to commit treason, and that, upon a fair construction of it, no man of good sense can fail to be of this opinion. The oath says, "I will persevere in my endeavours to obtain for all the people in Great Britain and Ireland, not disqualified by crimes or insanity, the elective franchise, at the age of twenty-one, with free and equal representation and annual parliaments; and that I will support the same to the utmost of my power either by moral or physical strength, as the case may require." The learned gentleman stated, that the oath binds the person taking it to support the endeavours made to obtain annual parliaments and universal suffrage, and he stated so correctly. He observed that the oath could not bind them to support what was not in existence, and that therefore it was to obtain, not to support, annual parliaments and universal suffrage, things not in existence, that the oath had been administered and taken. It remains for you to consider, whether the oath to support with moral and physical strength endeavours made to obtain annual parliaments and universal suffrage, is an oath which subjects those administering or taking it to the charge of administering or taking an oath purporting to bind those taking the same to commit treason? and upon that narrowed construction of the oath I join issue with the opposite counsel.

It was said very ingeniously, that physical strength may be innocently employed in many ways for the support of endeavours to obtain universal suffrage and annual parliaments—that it may be employed in the erecting of hustings for meetings to petition parliament on the subject—that it may be employed in running about and soliciting members of the legislature to give their support to such petitions. These are certainly exercises of physical strength, but not of the kind referred to in the oath. The oath binds the persons taking it to use *all* their physical strength, as the case may require. The instances which have been mentioned of the application of physical strength are not the only ways in which physical strength may be employed in order to obtain the objects spoken of; yet, by the terms of the oath, there is no limitation as to the kind of physical strength which the parties were to use. They were to use the whole of their moral and physical strength; and the terms force and strength have here the same meaning. If an innocent purpose only had been in the view of these persons, then why were they anxious for concealment?—What follows in the oath? "And I do further swear, that neither hopes, fears, rewards, or punishments, shall induce me to inform on, or give evidence against, any member or members, collectively or individually, for any act or expression done or made, in or out, in this or similar societies,

under the punishment of death, to be inflicted on me by any member or members of such societies. So help me God, and keep me steadfast." This is a remarkable part of the oath, and surely such concealment was not necessary in erecting hustings, or doing any of the things which were suggested by the learned counsel in his illustrations. There can be no use for such concealment, where lawful means are to be employed for the attainment of lawful objects. Every person who reads the oath must see that it proves in the strongest manner, that illegal objects were in the view of the parties. This is obvious, without travelling beyond the four corners of the oath itself. It is so obvious, that no argument can prevent the indictment from going to trial. The oath alone, without going to any other article of evidence, is directly criminal, and implies that the purpose for which the meeting was assembled was an illegal purpose, and the association an illegal association.

It was said by the learned gentleman, that the word "force" had been "*artfully*" substituted in the indictment for the word "strength." But according to my construction, they have no different meaning—they are synonymous. But I may answer his statement by a remark of his own which is well founded, that any inference from the oath adjected in the indictment does not signify, unless the oath itself necessarily imply that inference. The artifice, therefore, if there had been any (and there was assuredly none), could have no effect, as your lordships are to judge of the oath itself, and not of the conclusions drawn from it by the prosecutor.

It is also libelled in the indictment (and to the proof of that no objection has been stated), that this oath was administered at secret meetings. To a proof of this averment, no objection has or can be made; and if it shall be proved that this oath was administered at a secret meeting, this is an additional circumstance of evidence which must go to the assize, to show that the purpose of the oath was illegal and criminal. That the oath was administered at a secret meeting is charged, I observe, with regard to the meeting first libelled on in the indictment.

It is argued, that the narrative of the indictment—the general statement of treasonable conduct which precedes the statement of the particulars founded on—is not relevant to be proved. I apprehend, however, that many examples might be given from the daily practice of the Court of such narratives as this going to a jury. One example that occurs to me—(I am sorry that I am under the necessity of speaking from memory alone, as I am certain that if I had had time to make an investigation, I could have produced many examples on the point)—an example, I say, occurs to me, which is probably in your recollection. The case I allude to was that of a charge for uttering forged notes. The forgery had been committed in England;—that crime, therefore,

the Court had no jurisdiction to try. Yet you admitted the statement of the forgery in the narrative of the indictment *in modum probationis* of the crime of uttering the forged notes in Scotland, and as relevant to infer the knowledge of the forgery in the utterer. This is settled law; and the oath here charged is at least as intimately connected with the statement of treasonable practices mentioned in the narrative, as the crime of uttering forged notes was with the perpetration of the forgery. I am not going too far in saying that the oath is nothing else than an overt act of a general treasonable conspiracy, not now charged against the parties. The whole import and construction of the present charge, indeed, involves the existence of another crime. The administration of the oath is a criminal act, binding the takers to commit another crime; and how is it possible to separate the two? How can any circumstances regarding the one be explained without mentioning the other? We are bound to show that there was treason which would have been speedily matured, if the purposes of the persons who administered and who took the oath had been carried into effect. We are to prove what they were hatching—what they intended—and it is impossible to lay out of view the preparations they were making for committing treason, in speaking of what they bound themselves to accomplish. Thus the rule of not admitting proof of one crime in evidence of another, must be received with some qualification, and it has always been so in practice. [Mr. Drummond here referred to Hume's Com. vol. 3. p. 411, and to the case of Thomas Somerville, who was tried for perjury in 1813, as mentioned in the corresponding part of the supplement, p. 226.] There you have evidence of one crime admitted to prove another, although the one was quite different from the other. But here the crimes are intimately and almost inseparably connected. It is an established rule in the English law books, in cases of treason, not only that one overt act not laid as a charge, may be adduced as proof of one that is laid, but that a general proof of rebellion or conspiracy is allowed before proceeding to the particular acts charged; and the well known case of *Strafford** was quoted and received as an authority on this point in the trials of *Watt†* and *Downie‡*—in which the existence of a treasonable plot was allowed to be proved before the overt acts charged. The principal question is, whether the matter offered in evidence be pertinent to the point in issue?

It was said that we are not entitled to try a man for treason in this form, and that therefore we cannot indirectly try the treason as proof of another crime. I appeal, in answer to this, to the act of parliament under which we are now proceeding. The whole act, and

particularly the last clause, proceeds on the understanding that we are entitled to go on as we are doing in this trial, although the crime tried be treason.

"Provided also, and it is hereby declared, that any person who shall be tried and acquitted, or convicted of any offence against this act, shall not be liable to be indicted prosecuted, or tried again for the same offence or fact, as high treason, or misprision of high treason; and that nothing in this act contained shall be construed to extend to prohibit any person guilty of any offence against this act, and who shall not be tried for the same as an offence against this act, from being tried for the same as high treason, or misprision of high treason, in such manner as if this act had not been made."

Even if this act had never existed, I should have been prepared to maintain, on the ordinary rules of law, the competency of trying under a lower denomination of crime: what might have been tried as treason but the clause now quoted is quite conclusive. There is, therefore, nothing in the circumstance that the criminal proceedings set forth in the narrative of the indictment happen to be of a treasonable nature, that can make any difference in the case; and I submit, that as they form part of the *res gesta* at the time of administering the oath, and naturally enter into the history of the transaction, they ought to be admitted to proof, and found relevant with the rest of the libel. They are intimately and inseparably connected with the proof of the crime charged, and afford the clearest and most relevant *indicia* than can be imagined of the guilty purpose of the panel. It seems unnecessary to add that if it be relevant to introduce this statement *narrative*, the same specification is not requisite as if it had been made the subject of a substantive charge; and I should not have made this remark at all, unless there had appeared a disposition to argue upon this narrative, as if the relevancy of it were to be tried by the same rules as a charge in the indictment.

It was said by the learned gentleman, that the particulars charged as what the parties bound themselves to commit, would not have amounted to high treason even if they had been carried into effect. But how it can be maintained that the employment of force to accomplish public measures of this description is not treason, I cannot conceive. It appears to me to be beyond the ingenuity of even the learned gentleman himself, to persuade any person, that a public measure of any sort may be accomplished, not to say the fundamental principles of the constitution subverted by force, by a number of persons conspiring together for that purpose without levying war against the king. According to my view of the law, I might have been entitled to charge the administration of the oath itself as high treason. The words of the statute 36 G. III, c. 7. seem completely in point, as to the treasonable nature of the association and the oath.

* 3 How. St. Tr. 1381.

† 2 How. Mod. St. Tr. 1167.

‡ 3 How. Mod. St. Tr. 1.

"If any person or persons, &c. shall compass, imagine, invent, devise, or intend death or destruction, &c. &c. or to deprive or depose him, &c. or to levy war against his Majesty, in order, by force or constraint, to compel him to change his measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe both Houses, or either House of Parliament—and such compassings, imaginations, inventions, devices or intentions, or any of them shall express, utter, or declare, by publishing any printing or writing, or by any overt act or deed." Even under the first head of the statute of Edward III. it might have been maintained to be treason to conspire for the attainment of universal suffrage and annual Parliaments by force; and the oath and secret meeting might have been given in evidence as overt acts.

But it is unnecessary to enter upon the question, whether the acts libelled as having been done, might have justified a charge of treason. It is enough for the present purpose to say, that if the force which the parties bound themselves by this oath to use, for obtaining annual parliaments and universal suffrage, had been actually employed for those purposes (which are not only of a public nature, but utterly subversive of the whole frame of the constitution) this would clearly have been that species of treason which consists in levying war against the king.

It was said, that the concluding part of the indictment does not correspond with what goes before, as the charge of *intending* is omitted, and that of *purporting* only relied upon. It is true, that the prosecutor relies completely on the charge of *purporting*, because the purport and open meaning of the oath is so clear; but the proper answer to this critical objection is, that it is quite unnecessary and unusual to repeat in this part of an indictment the whole expressions previously used, as it always bears such a reference to what goes before, as to point the attention to the preceding description as that which is here spoken of. Thus, "Times and places *foresaid* the *said* oath or engagement," &c. This is the usual style, and it is not customary to repeat all the preceding epithets and qualifications which are included and held repeated by the reference to what goes before.

I am sensible that there are many things which I have omitted, but I will not detain your lordships longer.

Mr. *Solicitor General*.—In concluding the debate on the part of the crown, I must be pardoned for observing in behalf of the prosecutor, that nothing is or can be more remote from his intention, than to introduce into the law of the land any of those constructive treasons to which reference was made by my learned friend at the commencement of his speech for the panel. Nothing can be more remote from the intention of the public prosecutor in Scotland at any period. And if such a profligate design existed, it would meet

with a sure and signal defeat from the independence of the bar, and from the vigour and integrity of the court.

The present prosecution does not involve any charge of constructive treason. It is founded upon a statute of recent introduction; a statute quite plain and explicit; a statute which, very unfortunately for the country, the late corruption of the public mind and of the moral habits of some part of the population has rendered necessary for the protection of the state.

In answering the argument maintained for the panel, I must take leave to recal to your lordships' notice two of the species of treason, which were not introduced, but well defined, by the statute of Edward III. These two species of treason are,—*first*, Compassing the death of the king; *secondly*, Levying war against the king.

Your lordships are all aware, that by declaring and defining the first species of treason, the legislature bestowed upon a mental act—upon the imagining, or compassing in the mind, the death of the king—the character of a completed crime, punishable by a high sanction; and it provided, that in the case of this highest offence against the state, mere intention (which in other cases is not cognizable by the criminal tribunals to that effect) should hold the same rank in the scale of guilt and of punishment with a completed act. It rendered the compassing or imagining, the mere conception or design of destroying the king, punishable with the pains of treason. There is a remarkable distinction, therefore, between this class of crimes and all others. It may be said generally, almost without exception, that the mere compassing of any other act, the mere compassing of murder, for instance, the criminally imagining such a deed is not a cognizable crime, at least is not cognizable as the crime of murder. But in this department of the law the case is different. The imagination of the king's death is the statutory crime, and nothing more is required than an overt act, by which this imagining is inferred or proved.

As to the next species of treason, that of levying war against the king, I do not mean to give an opinion upon the question, whether the mere imagining of it, as proved by the administering or taking an oath, or by any thing short of the total or partial execution of the act of levying war, would be held to fall under the statute. I am not here called upon to offer any opinion on such a question. But you will see by and by the reason why I have called your attention to the circumstances which have now been stated.

On the supposition, that by the former and existing law it was doubtful whether in the general case the mere *intention*, or imagining, or compassing to commit any treason, when not reduced into action, is in itself treason, the statute of the 52d of the king was introduced, the object of which was, to bring the

intention of committing treason, when so far matured as to be rendered obligatory by an oath, into the class of crimes punishable with death. By the previous law, it might perhaps be doubtful whether such criminal intention could in certain cases infer a capital punishment. But when the intention is approximated to execution by an oath, and is manifested by such an overt act, when it is accompanied by an oath to commit and conceal it, the legislature has enacted that it shall be punished as a capital crime. That the act described so distinctly in the statute is a high offence, an offence from which the greatest danger to the public may be apprehended, and by which the deepest depravity of heart in the perpetrator is proved, no man will venture to dispute. I can see no reason why the highest sanction should not be affixed to the commission of it. I submit that all this is as clear as the sun, and that neither the legislature nor the public prosecutor can be charged with any design of introducing constructive treason, by demanding the infliction of a capital punishment on such a crime.

Taking that view of the objects and purposes of the statute, and considering it with reference to the principles and system of the law of treason, and with reference to the general principles of criminal jurisprudence, your lordships will be pleased to attend to the terms which are used. "That every person who shall, in any manner or form whatsoever, administer or cause to be administered, or be aiding or assisting at the administering of any oath or engagement, purporting or intending to bind the person taking the same to commit any treason, or murder, or any felony punishable by law with death, shall, on conviction thereof, by due course of law, be adjudged guilty of felony, and suffer death as a felon, without benefit of clergy." It is plain, in looking to the terms of the statute, that it did not contemplate an act which has been done, but one which is to be done; which exists only in intention, but which, at the same time, exists in a matured intention; an intention passing from the heart of one man to the heart of another, and attended by the obligation of an oath for the concealment and accomplishment of the imagined crime. And sure I am, that it is impossible for any one taking this view of it not to be of opinion, that the act defined is not merely a statutory crime, but must be felt and confessed to be a crime by the common sense and universal feelings of civilized man. At all times and in all places it is a crime, and in no place or country is it more criminal than in Scotland, where there exists, in many districts of it at least, a religious feeling amounting almost to fanaticism; and where a union of political and religious passions must create in the vulgar mind a darker, and more atrocious character.

Holding, as I do, with a confidence not inferior to that which has been expressed on the other side, the interpretation of the statute, as

well as its application to the previous law, and its necessity in the circumstances and character of the country, on which I have insisted, to be correct, I solicit your attention to the first, and, in my mind, by far the most important objection that has been made, as to the mode in which the libel is laid. That objection consists of two points in law, as I understand it. In the first place, that the oath taken does not, upon a fair construction of it, amount to the offence stated in the major proposition; or, in other words, to the statutory offence. And then, supposing it did, it is alleged, secondly, that in the indictment there is a want of specification of circumstances, and detail of the manner in which the intended treason was to be committed.

I call your attention, in the first place, to the terms of the oath, for I have no hesitation in saying, that if this oath do not of itself, and in fair and honest construction, amount to the crime laid in the major proposition, there is no case before you. For I have no intention (I disclaim it, and no one can with truth impute it) to press a severe or harsh construction of the oath. The terms of this oath have been often read to you, and, however disagreeable it may be to repeat that which you have so often heard, the importance of the case must be my apology for again reading its words and subjecting it to a critical examination.

I may here state, that in construing the oath there can be little room for difference of opinion as to the principle on which you ought to proceed. I am willing to admit, that the panel at the bar is not to be ensnared by any subtle, recondite, and remote interpretation of the oath, by any interpretation different from that which an ordinary man would put upon it, on reading it from beginning to end. But I maintain with equal confidence, that the panel cannot escape from the law, and the public safety is not to be endangered, by a construction in his favour, which is recondite or subtle—by an interpretation of the oath, which it plainly could not bear in his own mind, and which plainly he knew it did not bear in the minds of those to whom it was administered. Between these two extremes, it is your peculiar province to strike out the middle course, and to adopt that just and rational interpretation which will not only command the acquiescence, but the approbation of the public prosecutor.

What does the oath say? "In the awful presence of God, I, A B, do voluntarily swear that I will persevere in my endeavouring to form a brotherhood of affection amongst Britons of every description, who are considered worthy of confidence." I concur with my learned friend in saying, that this part of the oath, if taken by itself, is perfectly innocent. The oath goes on, "And that I will persevere in my endeavours to obtain for all the people in Great Britain and Ireland, not disqualified by crimes or insanity, the elective franchise, at the age of twenty-one, with free and equal representation, and annual parlia-

ments; and that I will support the same to the utmost of my power, either by moral or physical strength, as the case may require: And I do further swear, that neither hopes, fears, rewards, or punishments, shall induce me to inform on, or give evidence against, any member or members, collectively or individually, for any act or expression done or made, in or out, in this or similar societies, under the punishment of death, to be inflicted on me by any member or members of such societies. So help me God, and keep me steadfast." Two questions have been raised on this part of the oath. The counsel for the panel has maintained two propositions. *First*, That the words "*support the same*" mean, that the oath-taker was to support annual parliaments and universal suffrage, after these mighty improvements were established by regular and constitutional means. And, *second*, That even if the words *support the same* mean, to support the endeavours to obtain these objects, yet the *physical strength* to be used was capable of being used in a manner not illegal.

On the first point, your lordships have to consider what is here understood by the word *same*. What is the antecedent to this pronoun? I submit, there are only two ways of giving a sound construction of this word. It must either apply to the whole of the previous branch of the sentence, or to a part of it. If the first is adopted, and if it be held to embrace the whole of the previous part of the sentence, and if the antecedent be considered as thus extensive, then the construction put upon it by the other side will be destroyed; for if the word "*same*" embraces all the previous part of the sentence, it includes both the use of physical force in obtaining annual parliaments and universal suffrage, and its employment in maintaining these objects after they are accomplished. This is a mode of construction so perfectly fair, that the panels cannot object to it.

But this is not the construction which a perusal of the oath naturally dictates. It is clear that by it the obligation to accomplish the wished-for changes by physical strength was contemplated, and that this was the sole purpose of the oath. I maintain, that taking the whole of the oath together, comprehending the obligation to concealment, it is impossible to consider it without concluding, not by a remote and distant construction, but by direct rational necessary inference, that the parties had in their minds a criminal accomplishment of their designs, and the moment criminal intention is granted to me, it follows that there can be no criminal accomplishment of this design, but such as would be treason. The reasonable, the fair construction, that which obviously must have been in the mind of the giver and taker of the oath, is, that the word *same* had no other application than that which I have stated, viz. to bind to the use of physical strength for the attainment of the object. This is the correct, grammatical construction,

pointed out, not only by the juxtaposition of the words, but by the general sense of the whole passage and of the whole oath; and it is impossible to put any other interpretation upon it, without sacrificing the public safety, and public law to a forced and subtle construction. I do not dwell longer on this point, because truly it lies in a nut-shell, and if by merely stating it, I do not shew that I am in the right, I despair of doing so by any length of argument.

Now, your lordships have to consider, whether, supposing it were established that the obligation in the oath is to support endeavours to obtain annual parliaments and universal suffrage by physical strength, the act which was thus meditated, does, if accomplished, amount to treason. That such purpose would, if accomplished, have constituted treason, is proved by the concurrent testimony of all lawyers ancient and modern. The essence of treason consists in the application of force to the accomplishment of an alteration in any general law. How did my learned friend get out of this dilemma? He maintained that physical strength for the accomplishment of any change in the laws of this kingdom, might by possibility be exercised without committing treason; and this he illustrated by supposing the case of the Speaker of the House of Commons being forced by threats and violence to consent to a bill for the abolition of the House of Lords, or of any of the branches of the constitution, which bill having passed the House of Lords, had its fate dependent on the Speaker's casting vote. That whimsical case can scarcely be called a case in illustration; but if it were necessary for me to enter into that supposed case, I would say without hesitation, that here was treason, not merely under the act of the 36th of the king, but under what I may call the previous common law of the land. Many decisions might be referred to, to establish this. But I have no occasion to enter upon such an inapplicable question.

The other instances of the possible exertions of physical force in the accomplishment of the purposes contemplated by the panel and his associates are utterly absurd. It is said, that physical force may be exerted in the carrying of messages, in the erection of hustings, in the keeping off the crowds, and in various other ways which are all innocent, and which are all conducive to the attainment of the objects in view. I contend, that in these illustrations the counsel for the panel forget or overlook the distinction between the terms moral and physical, as employed to characterize human action. When a man delivers an oration, he is understood in common language to exercise his moral power or strength. But my learned friends must admit, that some physical force or strength is also at the same time exerted. To make the pen with which the political orator is to write, to carry the bench from which the political orator is to declaim, to keep off the crowd with which the political orator would

otherwise be incommoded, are all actions subservient to the moral powers which are to be exerted. It is impossible to deny this without confounding the distinction between the terms moral and physical. No moral power can be exercised by man without physical exertion, but when the distinction to which I have adverted is recollected, the illustrations which have been offered are either in themselves absurd, or are against the argument of the panel, and must be classed with moral, and not physical exertions.

The obligation in the oath is, to employ moral and physical strength, as the case may require—that is, such moral strength, as the case may require, and such physical strength, as the case may require.—It is thus clear, that the terms of the oath do not bear a limitation to that innocent sort of force by the criminal example of which the learned counsel illustrated his argument. According to the clear terms of the oath, such physical strength was to be employed as the case might require, for the accomplishment of the purposes which have been mentioned. What, I ask, are we to understand—what is the legal inference from the construction I have given? It is, that physical strength, as the exigency might require, was to be used for the accomplishment of a change in the constitution.

It is unnecessary to advert to the extreme absurdity of endeavouring to distinguish between the meaning of the words *strength* and *force*. They are certainly synonymous terms; and for the present purpose, at least, no distinction can be stated between them, either in popular or technical use. It is impossible to accomplish the alteration or subversion of any part of the constitution by physical force, without, in legal acceptation, levying war for that purpose, or compassing the king's death, or being guilty of some other treason. The application of numerical physical strength is nothing else but the levying of war. But if war be levied within the kingdom for any general purpose,—for the purpose of subverting any of the branches of the constitution,—that war is understood to be levied against the king, who, being the executive, is bound to protect the other branches of the Legislature. This is the import of all the authorities, to some of which I may now direct the attention of the Court.

The first authority to which I refer is that of Blackstone, who states the law in a brief and popular form. "The third species of treason is, 'If a man do levy war against our lord the king in his realm.' And this may be done by taking arms, not only to dethrone the king, but under pretence to reform religion, or the laws, or to remove evil counsellors, or other grievances, whether real or pretended. For, the law does not, neither can it, permit any private man, or set of men, to interfere forcibly in matters of such high importance; especially as it has established a sufficient power, for these purposes, in the high court of

Parliament: neither does the constitution justify any private or particular resistance for private or particular grievances; though in cases of national oppression the nation has very justifiably risen as one man, to vindicate the original contract subsisting between the king and his people."*

The next authority to which I refer is that of *Foster*, a book which is daily cited by English Judges, as an undoubted authority. I quote from page 211.—"Insurrections in order to throw down all enclosures, to alter the established law, or change religion, to enhance the price of all labour, or to open all prisons—all risings, in order to effect these innovations, of a public and general concern, by an armed force are, in construction of law, high treason, within the clause of levying war; for though they are not levelled at the person of the king, they are against his royal majesty; and besides, they have a direct tendency to dissolve all the bonds of society, and to destroy all property, and all government too, by numbers and an armed force. Insurrections likewise for redressing national grievances, or for the expulsion of foreigners in general, or indeed of any single nation living here under the protection of the king, or for the reformation of real or imaginary evils of a public nature, and in which the insurgents have no special interest—risings to effect these ends by force and numbers are, by construction of law, within the clause of levying war; for they are levelled at the king's crown and royal dignity."

The only other authority to which I shall refer, is that of a Judge, than whom none was ever more highly or more deservedly honoured during a long and splendid career. I quote from the summing-up of lord Mansfield on lord George Gordon's trial.—"There are two kinds of levying war:—One against the person of the king; to imprison, to dethrone, or to kill him; or to make him change measures or remove counsellors:—The other, which is said to be levied against the majesty of the king, or, in other words, against him in his regal capacity; as when a multitude rise and assemble to attain by force and violence any object of a general public nature; that is levying war against the majesty of the king; and most reasonably so held, because it tends to dissolve all the bonds of society, to destroy property, and to overturn government; and by force of arms to restrain the king from reigning according to law.

"Insurrections, by force and violence, to raise the price of wages, to open all prisons, to destroy meeting-houses, nay, to destroy all brothels, to resist the execution of militia laws, to throw down all inclosures, to alter the established law, or change religion, to redress grievances real or pretended, have all been held levying war. Many other instances might be put. Lord Chief Justice Holt, in

* 4 Comm. 81.

sir John Friend's case, says, "if persons do assemble themselves, and act with force in opposition to some law which they think inconvenient, and hope thereby to get it repealed, this is a levying war, and treason." In the present case, it don't rest upon an implication that they hoped by opposition to a law to get it repealed, but the prosecution proceeds upon the direct ground, that the object was, by force and violence, to compel the Legislature to repeal a law; *and therefore, without any doubt, I tell you the joint opinion of us all, that, if this multitude assembled with intent, by acts of force and violence, to compel the Legislature to repeal a law, it is high treason.*

"Though the form of an indictment for this species of treason mentions drums, trumpets, arms, swords, fises, and guns, yet none of these circumstances are essential. The question always is, *Whether the intent is by force and violence to obtain an object of a general and public nature by any instruments, or by dint of their members?* Whoever incites, advises, encourages, or is any way aiding to such a multitude so assembled with such intent, though he does not personally appear among them, or with his own hands commit any violence whatsoever, yet he is equally a principal with those who act, and guilty of high treason."* Many other authorities to the same effect might be accumulated. I need not quote Hume, who gives a very luminous abstract of all the English authorities on the subject, and gives a summary which, in perspicuity and precision, is not surpassed by the boasted oracles of English law.

I say, therefore, on these authorities, it is utterly impossible to imagine that any change in the constitution can be accomplished by physical strength, without necessarily implying—not constructively, but necessarily implying—that it is done by force and violence. Levying war is nothing more than the application of an act which is treason. The form or mode of this act may probably be that of levying war, to overcome or prevent resistance. It does not consist in having drums, or uniformity of dress, or the other usual appendages of warlike pomp. It does not consist in any particular kind of offensive arms, but in the application of a powerful and numerous force; and it is impossible that strength for the accomplishment of any change in the constitution can be applied in any way, so as not to include the crime of treason, either of levying war, or of compassing the king's death, or of treason, under the Stat. 36 G. III. That which is accomplished by force can only be done *sub specie belli*, in so far as those terms have any intelligible meaning, and the same quality must characterize that which is intended or resolved to be done. I submit, therefore, that the construction given by the learned gentleman to the oath is erroneous, and that the only sound, the only legal, and

the only obvious construction of it, is that which I have stated to your lordships.

It was contended further, however, that, supposing a treasonable purpose to have existed, it is still necessary that it should be proved by and appear in the oath, and in the oath alone, in order to have the case brought under the statute. If I rightly understood this plea, two things were maintained, which I own appeared to me to be inconsistent: It was first maintained, that there is a want of specification in the indictment as to the mode in which the treason contemplated by the oath was to be effected; next, it was maintained, that in this indictment, charging the panels with administering unlawful oaths, we are not entitled to go into any proof of acts of treason said to have been committed by them, for that would be to make the proof of one crime the proof of the commission of another. These I consider to be inconsistent objections.

Whether the treasonable purpose should appear in the oath itself, to bring the case within the statute, it is unnecessary to argue, because in the present case we do not desire to go beyond the contents of the oath. But in passing, I must deny that this plea for the panel is sound, or at all warranted by the terms of the statute.

With respect to the other objections, I must observe that from the nature of the crime which the statute has defined, you neither can require, nor can you expect, in charging it, a specification of overt acts of treason. According to the previous argument of the panel, the prosecutor is not entitled to prove any acts of treason, if such had been actually committed, and herein lies the monstrous inconsistency of his present argument. In my view of the case, the specification which the panel thus alternately opposes and demands, is morally impossible.

The charge here is not for the accomplishment and completion of the crime of treason;—the charge is for the conception, the imagination of treason, sanctioned by an oath, and so far by an overt act consisting in the administration of an oath. When a crime has not been actually committed it is impossible to state the circumstances of mode, time, and detail of execution. When a crime has been committed, it is of course an essential mode of that criminal act, that it was accompanied by time, place, and circumstances; and when a panel is brought to the Bar on a charge of having committed a crime, the prosecutor can have no knowledge regarding it without knowing some of the prominent circumstances of its execution. But you must all be aware, that this rule cannot apply to what merely exists in intention. Of intention here, your lordships have evidence by the oath, and the oath is such as the statute has made it a crime, either to administer or to take.

The crime charged is the administering an oath of a certain kind, and the mode of this act is admitted to be sufficiently detailed. It

* 21 How. St. Tr. 644.

is possible that when the oath was administered, not one circumstance was finally resolved upon as to the detail of the execution of the treason;—it is quite possible that no one circumstance may have been fixed on as to the mode in which it was to have been carried into effect;—and no resolutions adopted as to the course of proceeding to be followed for the accomplishment of the atrocious purposes of the parties. Different plans may have existed in the minds of different conspirators;—there may have been numerous disputes on the subject:—and therefore, from the very nature of the statutory crime, it is impossible that any such detail as the opposite party require could be given; and it is enough to say that the statute has not required it. The nature of the treason which the oath bound the parties to commit is as much specified as it is possible for the public prosecutor, or for any human being, to specify. He has said, that the treason contemplated was that which consisted in compelling an alteration in the established laws by force and violence. That this would be treason, who can doubt? Whether, in the actual accomplishment of it, the criminals would have levied war against the king, in the sense in which the law uses these terms, or whether they would have compassed or imagined the death of the king, or whether both these legal crimes would have been perpetrated in the actual consummation of their purpose, who can pretend to say? To demand, that the public should divine and specify the mode in which the treason was actually to be perpetrated, is absurd and impossible, because the modes are various. To demand that he should specify all the modes, in which the intended treason ought to be perpetrated, is plainly unnecessary and useless. It is sufficient for him to satisfy your lordships, that the object contemplated by the oath could not be accomplished but by means of treason; and on this I have already stated my argument, in the words of the highest authorities of the law.

But it was also rather inconsistently urged, that if we had stated treason to have been committed with all its circumstances, we should not have been entitled to offer any proof of this averment, or to give any detail of the facts here, as the panel is not on his trial for high treason; and one objection to the indictment is to the narrative of details with which the statutory offence is introduced. On looking into the statute, I think it is hardly necessary to go into this question, because it is not necessary that the commission of overt acts of treason should be alleged. I submit also, that what my learned friend, who immediately preceded me in behalf of the public prosecutor, stated on this part of the subject, was agreeable to the law of Scotland, and sufficiently obviates all that was urged in the way of objection to this part of the case.

In conclusion, it was strongly and powerfully urged, as a hardship in the case of the

panel, that, though acquitted on this occasion, he might be afterwards tried for treason. If he were to be acquitted of this charge, and afterwards brought to trial for treason, I suspect we should hear from his counsel an effectual argument against such second trial. I content myself with saying, that our view and interpretation of the statute is totally and absolutely different from that of my learned friend, Mr. Cranston, and that we conceive, from the terms of it, it is impossible such a second trial could be attempted. It is said, in the last clause, "That any person who shall be tried, and acquitted or convicted of any offence against this act, shall not be liable to be indicted, prosecuted, or tried again for the same offence, or fact, as high treason, or misprision of high treason; and that nothing in this act contained shall be construed or extend to prohibit any person guilty of any offence against this act, and who shall not be tried for the same as an offence against this act, from being tried for the same as high treason, or misprision of high treason, in such manner as if this act had not been made."

This clause was intended to guard against two inconveniences. 1st, It was intended to protect the subject from being tried again as for treason upon the facts on which the statutory crime shall have been already prosecuted. In other words, it would be impossible to give in evidence, in any subsequent trial of this prisoner, any of the facts which have been admitted to proof in the present case. 2nd, It was intended to guard against the possibility of the enactments of this statute being construed to affect the principles of the law of treason previously established. If, therefore, the public prosecutor were to attempt to bring the prisoner to trial for treason after an acquittal in this case, he could not bring in evidence any one of the facts which were more or less connected with the present charge. This is the plain and necessary construction of the clause in the statute, and entirely removes the objection.

I have to call your attention to an authority upon the question that has been started relating to the specification of the crime. It has been maintained, that we are bound to specify the general nature of the conspiracy before we can proceed to prove the criminal intention of the parties. On this subject I may refer to the general terms in which an English indictment has been laid and found relevant.* Such a decision, although it cannot affect the law of Scotland as a conclusive authority, yet is respectable in its way, and worthy of consideration. I submit that in describing the illegal societies, the terms used in this English indictment are more general than those which the prosecutor has employed on this occasion, and to which an objection has been taken. On the whole, I maintain that the indictment be-

* R. v. Moors and others, 6 E. 419, n; 1 Russ. 204; 2 Chit. Crim. Law, 102.

fore you, in the form in which it is laid, ought to be found relevant.

Mr. Clerk.—This indictment proceeds upon an act of parliament passed in the 52nd year of his majesty's reign, against administering unlawful oaths; and accordingly certain clauses of the act are set forth in the major proposition, as containing the description of the crime to be charged. This being the accusation, I need not remark that it would have been easy for the public prosecutor, if he had a case falling within the act of parliament, to confine himself to it in the minor proposition of his indictment, by stating in plain terms, that true it was and of verity, that the panel had administered such an unlawful oath as that which was prohibited by the statute—reciting the terms of the oath—averring that an oath in these terms fell under the statute as being a treasonable oath—stating how and in what respect it was treasonable, and to which of the different species of treason it applied—and specifying the time, place, and occasion of committing the crime. The relevancy of such an indictment might perhaps have been sustained. But the public prosecutor has not confined himself to the proper charge appearing on the major proposition of his own indictment, but has attempted most illegally to introduce matters totally unconnected with it, for the purpose of embarrassing the prisoner with accusations of a kind totally different, and which cannot be the subject of inquiry with reference to this charge.

In aid of his argument the public prosecutor has founded on an English case, in which one was convicted on evidence of circumstances to prove his intention in administering an unlawful oath. I mention this now, because it is proper to take an early opportunity of distinguishing that case from the present. I know very little of the English case referred to; but on hearing it read, I observed quite enough to perceive that it was a case totally different from the present—proceeding on another act of Parliament, different in its terms from the act which is now founded on by the public prosecutor. Under the former act it is competent to prove the intention of the unlawful oath by circumstances extraneous to the oath itself, though that is not competent in the present case, in which the Court and jury must consider the terms of the oath and nothing else.

It has to-day been noticed more than once, that besides the act of parliament libelled on, there is another act relating to unlawful oaths. But when you attend to the language of that act, you will see the difference between the terms there used, and those which are employed in this act of the 52nd of the king, and you will see the reason of that difference, and how it ought to affect indictments founded on these acts.

The indictment before the Court is founded on the act passed in the 52nd year of his majesty, directed against those "who shall, in any manner or form whatsoever, administer,

or cause to be administered, or be aiding or assisting at the administering of any oath or engagement, *purporting*, or *intending* to bind the person taking the same to commit any treason." &c. These persons are liable to the punishment of death, and every person who shall take the oath is punishable by transportation. By the 4th section it is enacted, that persons aiding and assisting at the administering of any such oath, shall be deemed principal offenders, and liable to the same punishment of death. By section 5 it is not necessary to set forth the words of the oath, and it "shall be sufficient to set forth the purport of such oath, or some material part thereof." By section 6. "any engagement or obligation whatsoever in the nature of an oath, *purporting* or *intending* to bind the person taking the same, to commit any treason, &c. shall be deemed an oath, within the intent and meaning of this act."

Now, by comparing this act with the former, it appears, that as the penalties are more severe, so the description of the crime is more limited than in the former act. It is necessary that the oath or engagement shall *purport* or *intend* to bind the person taking the same to commit the treason, or other crimes punishable with death, which plainly signifies, that the purport or intendment of the oath only, or, the true meaning of its words, shall be considered in any prosecution against those who administer it. The purport of an oath has no reference to the intention, criminal or otherwise, of the party who administers it. The words of the oath may be innocent, and yet the intention may be very criminal. On the other hand, the words may be very mischievous, and yet the intention may be otherwise. But the legislature imposes the penalty according to the purport of the oath; the intendment is the same with the purport in speaking of the oath; and either of these terms may be considered as synonymous with the true meaning of the oath separately considered, and without regard to the intention of the party who administers or takes it.

In one view, this statute is uncommonly severe, inflicting, as it does, a capital punishment for administering an oath which may be followed by no crime whatever. And even in taking the oath according to its purport or intendment, there is much severity; because the notion or opinion of the party who administers or takes it, as to its meaning and object, may be very different from the opinion of a court of law as to its true construction, and so the real intent of the party may be much less criminal than the intent which is imputed to the oath itself, by the judgment of the Court. But, on the other hand, while the act is full of severity on these points, it is lenient, in so far as it restricts the charge to the purport, intendment, or true meaning of the oath, and does not admit of a proof (which might be very loose and unsatisfactory, and very hard upon the prisoner to be tried) of an intention on his part, that went beyond the true meaning of the oath which he administered.

For this act does not allow it to be proved, that though the words of the oath were apparently innocent, yet that under colour of an innocent engagement the most criminal intentions were concealed or covered. In what way soever the public prosecutor may make a charge of that kind (which supposes, no doubt that a great crime had been committed), it is plain that he could not make such a charge under this act. And the statute tempers its own severity with lenity in another important circumstance. Those who aid and assist in administering the oath, are liable to the punishment of death; but those who were present at, and consenting to the administering the oath, are not liable as for administering it, and it seems to have been the intention of the legislature that they should not be so liable.

This act may be contrasted with that which was passed in the 37th year of the king, in which, though the punishment to be inflicted upon offenders was less severe (transportation for seven years), there is a much greater anxiety to prevent them from escaping; and, accordingly, the cases in which that punishment may be inflicted are much more numerous and comprehensive. It is enacted,* "That any person or persons who shall, in any manner or form whatsoever, administer, or cause to be administered, or be aiding or assisting at, or present and consenting to the administering or taking of any oath or engagement, purporting or intended to bind the person taking the same to engage in any mutinous or seditious purpose; or to disturb the public peace; or to be of any association, society, or confederacy formed for any such purpose; or to obey the orders or commands of any committee or body of men, not lawfully constituted, or of any leader or commander, or other person not having authority by law for that purpose; or not to inform or give evidence against any associate, confederate, or other person; or not to reveal or discover any unlawful combination or confederacy; or not to reveal or discover any illegal act done or to be done; or not to reveal or discover any illegal oath or engagement which may have been administered or tendered to or taken by such person or persons, or to or by any other person or persons, or the import of any such oath or engagement; shall, on conviction thereof," &c. And by the third section it is enacted, "That persons aiding and assisting at, or present at and consenting to the administering or taking" of the oath, &c. shall be deemed principal offenders.

Here is a very numerous collection of crimes; and as to the oath itself, not only are the persons liable to the statutory punishment, who are present at and consenting to the administering or taking of it, but every oath is comprehended, where it is of the nature specified, either in its purport or meaning, or where it is intended by the party administering

or taking it as an oath of that description, whatever may be its particular words. For the terms of the act are "purporting or intended to bind;" *purporting* refers to the meaning of the oath; *intended* refers to the intention of the party. An oath purporting to bind, is intended by the party for that purpose. The purport of the oath, and the intention of the party, may be different; but the statute makes him liable for both; not merely the meaning of the words employed, but his own intention (possibly a secret intention) in using them, which may be much more mischievous or wicked than the plain or true meaning of the words. Accordingly, in the English case, which was tried upon the 37th of the king, the meaning, object, and intention of the party, distinct from the meaning of the words, was allowed to be proved. There was clearly room in that act for the construction put upon it by the learned judge* who presided at the trial. But whatever be the construction of that act, there is not the least room for such a construction in the present case, where the words, as well as the objects of this statute, are so very different. The words "purporting or intending to bind," plainly require an oath which purports or intends to bind, and refer exclusively to the intending or intent of the oath, without regard to the intending or intent of the party, further than his intent to administer or take that oath. And this was apparently admitted by Mr. Solicitor General, when he observed, that the meaning, purport, and intention of the oath, are to be referred to in this argument, and not any conspiracy or extraneous circumstances. Thus there is a reason sufficiently evident for excluding a proof of circumstances where the indictment is laid upon the 52nd of the king, which might be admitted where the indictment is laid on the 37th of the king. And if it be competent under the 37th to prove the intent of the party by circumstances which do not appear from the oath, it was intended by the 52nd that no evidence beyond the terms of the oath itself should be allowed for proving the intent of the party.

If the observations I have now made are well founded, the public prosecutor is entirely wrong in attempting to introduce in the minor proposition of the indictment a long detail of circumstances, with no other object than to establish the supposed wicked intent of the prisoner, by evidence that is extraneous to the administering of the unlawful oath. The prosecutor ought to have confined himself to that charge; and I must again observe, that he had it in his power to frame an indictment without objection, by the proper recitals of the statute and of the oath, with proper allegations that the oath was prohibited by the act of parliament. But instead of adopting this plain method of proceeding, he has charged the panel with an indictment that is exposed to innumerable objections.

* 37 Geo. 3rd, c. 123, s. 1.

* Lord Alvanley; 6 E. 420, n.

The objection which I have just referred to would be sufficient to cast the indictment, if no other could be stated. But I shall remark upon some of the other objections. A good deal was said upon the competency of a general charge of high treason made in an indictment, without pointing out any particular species of treason. There can be no doubt whatever, that where the party is to be tried for the crime of high treason, a general charge of high treason made against him in the indictment would be good for nothing, and would at once be dismissed. For there are so many different kinds of high treason, each of them distinguishable from all the rest, that it would be just as well to charge a man with having committed a crime, without saying what crime, as to charge him with having committed treason, without saying what treason. But it seems to have been thought by the prosecutor that in this indictment it is sufficient to refer to high treason generally without distinguishing between one treason and another, because the panel is not to be tried for committing high treason, but for having administered an oath, purporting or intending to bind the person taking the same to commit high treason. In a charge of this kind, it has been thought unnecessary to specify the treason which the oath purported or intended to bind the person taking the same to commit. But it seems to be obvious, that there is precisely the same reason to specify the treason in this case as in a trial for high treason itself. If it be unnecessary to specify the treason in this case, would it be sufficient to allege, that the oath purported or intended to bind the person taking the same to commit a crime, without specifying what crime, or giving any notice whatever to the panel of the nature of that offence which the oath purported or intended to bind the person taking the same to commit? It is plain, that in such a case the panel would have no notice at all of the crime for which he was to be tried. An oath, binding the person taking it to commit a crime, may in every case be criminal; but an oath, leading to one crime, must always be distinguished from an oath leading to another and a different crime. A defence completely conclusive against the allegation, that the oath led to the commission of one crime, would be no defence at all, if the prosecutor should not insist on that, but on a different allegation, namely, that the oath led to the commission of another crime. The panel might be prepared to defend himself as to the application of the oath to one-half of the crimes in the Statute-book, and yet, having no distinct notice of the prosecutor's views, might be in no state of preparation to defend himself as to the application of the oath to another crime, of which he had no notice, and of which he had never thought. The same consideration shews, that among the different species of treason, that particular species should be pointed out in the indictment, to which the prosecutor is to insist that the oath was appli-

cable. It seems then to be indisputable, that the species of treason, should have been alleged or assigned in this indictment, and that the total want of the specification in it is as objectionable as it would be in a trial for high treason. The objection is founded on the great and indispensable rule in criminal justice, that the panel ought to have notice of the precise accusation against him; and the want of such notice in this indictment makes the case precisely the same as if the prosecutor had attempted to proceed without an indictment at all.

Another objection to the indictment was strongly and eloquently urged by Mr. Cranstoun, that you cannot, for the proof of a crime that is charged, prove any other crime that is not charged. This was stated, on the authority of Mr. Burnet, and of long practice. But one or two cases were cited against us by the counsel for the prosecution. I do not admit that these cases were correctly stated; but, at all events, they do not establish that the prosecutor is entitled to prove the extraneous circumstances alleged in the present case. One of the cases related to the uttering of forged notes within Scotland, and it was said, that in order to prove the charge of uttering in Scotland, it was competent to prove the forgery of the notes, although that crime was committed in England. That was a case of *crimen continuum*, in which the criminal act was begun in one place, *continued* and completed in another. If I recollect right, a case occurred some years ago, in which evidence of one crime to prove another was allowed, and the panel was convicted on a proof of that description. But that conviction was not approved of in another quarter, and when the circumstances attending it were known, the man got a pardon, in respect of the manner in which his trial had been conducted. One of your lordships will probably support me in this account of the case to which I now allude. I do not recollect the name of the party.

Lord Gillies.—My general recollection coincides with what Mr. Clerk has stated; but I do not particularly recollect the circumstances.

Mr. Clerk.—There are no *dicta* in the work of Mr. Hume, nor in that of Sir George M'Kenzie, inferring that a crime may be proved by another crime which is not libelled; and the authority of Mr. Burnet, who was a very attentive observer of the proceedings in criminal cases, is directly against the doctrine. He lays it down expressly, that one crime cannot be proved by another. Thus the authority as well as the justice of the case, is on the side of the accused.

But there is another objection to a proof of the conspiracy here mentioned. The allegation is in substance a charge of high treason; and would your lordships allow such a charge to be proved, under this indictment, in direct contradiction to the Act of Parliament upon which you try crimes of treason? Without the inter-

vention of a grand jury, treason cannot be tried. But if it be utterly incompetent to prove an allegation, it must be equally incompetent to make the allegation. No party is entitled to allege what it is not competent for him to prove. And, if the public prosecutor cannot be allowed to prove the crime of treason, it is impossible for him to proceed on this indictment.

To another objection, no sufficient answer has been made, that if the proof of treason is entered on, the trial is a public precognition; and if the result in this present trial does not satisfy the prosecutor, the panel may be tried again upon the same facts. What was said in answer to this? From the very terms of the act of parliament the panel cannot be tried again for the same offence. What is the same offence? The prisoner is now to be tried for administering the oath, and not for high treason. The two crimes are altogether different. The prisoner, if he is acquitted, cannot be tried for high treason, on account of his having administered a treasonable oath; but there is nothing in the statute against his being tried for a separate treason, extraneous to the charge of having administered the oath. But, according to the idea of the public prosecutor, the oath may be connected with overt acts of treason, which might be distinctly and separately charged; and if it were permitted to prove these overt acts incidentally in this trial, the prisoner might, on such a precognition, be afterwards tried for treason.

Another objection is, that the requisite specification of the alleged conspiracy has been withheld by the prosecutor, the prisoner not having been favoured with the names of any of the persons alluded to as engaged in the conspiracy; and this objection is of itself fatal to the indictment. It is stated in the indictment, that the prisoner wickedly, &c. conspired, &c. with other evil-disposed persons, to break and disturb the public peace, &c. But no one of the persons engaged in the conspiracy is mentioned. Why? We have not even been told that the public prosecutor does not know the names of these supposed persons; but if he was ignorant of their names, he should have said so; for in an indictment, the public prosecutor should give a full detail of what he knows to the panel, for the preparation of his defence. When a fact that should be stated, if known to the prosecutor, is unknown to him. He should at least state that such fact is unknown to him. He should do every thing to apprise the accused of the nature of the proof which he has to meet. Where that is not fairly done, the prisoner is entitled to object that he has not received the notice on the subject to which he is entitled by law. If a panel be charged with a wicked conspiracy, he should be informed of the other persons with whom he is supposed to have been engaged, if the prosecutor knows who they are; and he is presumed to know them, if he does not state that they are unknown to him. How hard would it be if the law were otherwise! A con-

spiracy charged may be one of fifty supposed conspiracies. If the conspiracy is not identified by the names of the persons engaged in it, how can the prisoner know what the prosecutor really means to charge?

The other objections to this part of the indictment, though they may be less material, are still of very great importance, and their validity is recognized by Mr. Hume, who employs many pages of his valuable work upon questions of this description.

The gentlemen opposite admit that fair and reasonable notice of facts must be given, and that Mr. Hume says so. He does indeed say so. But, although they acknowledge his authority, they assert, that such notice is not always necessary. How does this agree with the opinion of Mr. Hume, who says expressly, that where the public prosecutor has it in his power to mention particulars, and where his doing so may be essential to the information of a panel for his defence, the Court will not oblige the panel to answer without his getting a full and particular statement of the charge against him.

I come next to the argument maintained on the import of the oath. It is asserted, that an oath in certain terms was administered by the panel. I do not profess to understand the precise meaning of this supposed oath. It is rather loosely and indefinitely expressed. To understand it precisely is, however, not absolutely necessary to the consideration of the question before the Court. Whether this be a lawful oath, is not the question. The oath may be extremely wicked, and perhaps there is no one who now hears me who does not think that there was a bad intention in it. But that is not the question before your Lordships. The question is, WHETHER THAT OATH AMOUNTS TO AN OBLIGATION TO COMMIT HIGH TREASON? Where a man is indicted for the crime of murder, the question is not, Whether he has been guilty in other respects? whether he has committed a robbery or any other crime?—he has only to answer to the indictment for murder. The question here is, Whether the oath did purport and intend an obligation to commit high treason? For the oath is not said to be an obligation to commit murder or other felony. It is alleged to be an obligation to commit treason, and to that allegation the question is confined.

The averment of the public prosecutor upon this point is expressed thus in the indictment, "which oath or obligation did thus purport or intend to bind the persons taking the same to commit treason, by effecting by physical force the subversion of the Established Government, laws, and constitution of this kingdom."

Mr. Cranstoun, in his excellent speech, completely demonstrated the futility of this averment, both in its form and in its substance; but it appears to me that an argument much less complete and powerful would have been quite sufficient in such a case. For can

it be possible to sustain an indictment alleging, with so little specification, an obligation to commit treason? Who does not know that there are a great variety of treasons distinguished from each other by difference of species, in the same manner and to the same effect as other crimes, which are known each by its species and so distinguished from other crimes which do not belong to that species? Yet the indictment contains nothing to mark the species of treason which was to be committed. It appears from his words, that the prosecutor wishes to charge the prisoner with a delinquency that has a relation to some treason, but that is all. His meaning goes no further; and such is not a legal meaning when expressed in an indictment, as the substance of a charge to be tried. Indeed, it is so indefinite, that I do not understand what it really imports. Clearly it does not sufficiently describe any known treason. It seems to point at a treason to be committed by levying war. But is there any word about levying war in the indictment? Not one syllable; and yet it is acknowledged by every authority from Coke downwards, that where a man is tried for levying war against the king, the levying of war must be specially set forth in the charge; and however brief and general our neighbours may be in drawing their indictments (and they are more so than we), this specification is required, that the parties have conspired and actually engaged in levying war [Mr. Clerk here referred to Lord Coke and Sir Mathew Hale, and made some further observations relative to a charge of levying war.]

All this shows, that if in the present case the treason to be committed was levying war, that species of treason should have been set forth. But in this indictment, though the oath is set forth, and certain words are used, intended as an averment of its criminal tendency, the averment is in terms so vague and general, that it cannot be gathered from them what the prosecutor means as to the species of treason which the prisoner had in view.

Thus the meaning of the oath, whatever it may be, is not sufficiently charged in an indictment proceeding upon the statute 52 of the king. And though an exposition of its actual meaning may be attended with difficulty (perhaps no certainty can be had in expounding it), it is easy to show, that it cannot be regarded as a treasonable obligation, however objectionable in other respects your lordships may think it. In considering this obligation, I shall lay aside for a moment two circumstances that are immaterial to the question, Whether it is an obligation to commit treason? one is, that it is an *oath*—another, that it binds to *secrecy*; for these circumstances, though they are of an aggravating nature, do not make the *obligation* more or less treasonable. As an engagement may be treasonable, without being in the form of an oath, so an engagement may be confirmed with an oath, without being treasonable or criminal at all. In one remarkable transac-

tion of this kind, an oath, when proposed was rejected by the most determined of the conspirators.

“No, not an oath:—

—what other bond

Than secret Romans, that have spoke the word,
And will not palter?”*

The nature of a conspiracy is the same with or without an oath, though an oath may be an aggravation of its wickedness. In the question whether the engagement was, to commit the crime of treason, I may therefore lay out of consideration the circumstance that it was in the form of an oath. Again, an oath of secrecy may be wicked, even although the intention of the persons who take it is innocent in other respects; and it will not make an engagement or obligation treasonable or otherwise, that the parties to it were sworn to secrecy. The question as to the true nature of the obligation, as being treasonable or not treasonable, evidently cannot depend upon the secrecy to which the parties were sworn. The form of an oath, and an oath too of secrecy, may and will greatly aggravate the offence that is committed by entering into any conspiracy, whatever its illegal object may be. But neither the oath itself, nor the obligation of secrecy, will make that treason which is not treason, nor change an obligation to commit any illegal act or crime, in itself not treason, into an obligation to commit the crime of high treason.

Keeping these important considerations in view, that an engagement may be very criminal without being treasonable—that the intervention of an oath does not make it treasonable,—and that even an oath of secrecy cannot have the effect to change a crime, how wicked and dangerous soever, into high treason, if the crime is not in itself high treason, but a crime of another character and description,—I shall offer some remarks upon the terms of this oath. And here I must repeat, that the oath may admit of no certain or precise construction. It may be understood in twenty different senses by twenty different persons. Perhaps no two men would agree with each other as to its precise meaning. But my present task is not to show the precise meaning of the oath, but a different and an easier task, namely, to show that it does not import an obligation to commit high treason. For this purpose I shall offer a very few remarks upon it.

Nothing can be known of the nature of this engagement, but from the words of it. The party binds himself by an oath, and the first part of his obligation is expressed in these words: “That I will persevere in my endeavouring to form a brotherhood of affection amongst Britons of every description who are considered worthy of confidence; and that I will persevere in my endeavours to obtain for

* Shakspeare. *Jul. Cæs.* Act 2, Scene 1.

all the people in Great Britain and Ireland, not disqualified by crimes or insanity, the elective franchise at the age of twenty-one, with free and equal representation, and annual parliaments." The purposes here expressed are, I presume, innocent of treason, though it would not be easy to tell the precise meaning of the words, and it is evident that they have no precise meaning. On the contrary, they are so extremely vague and indefinite, that every person taking such an oath seems to be at full liberty to put his own meaning upon it, without being at all exposed to the reproach of refusing to fulfil his obligation. Universal suffrage and annual parliaments are very naturally supposed to have been the objects in view; but still there is nothing in the engagement itself, nor in the manner of expressing it, that is treasonable or even illegal in any respect. If the obligation had stopped with the words to which I have just referred, a prosecution for administering a treasonable oath would have been utterly absurd. But the obligation proceeds with other words, which are supposed in the indictment to be treasonable, "and that I will support the same to the utmost of my power, either by moral or physical strength as the case may require." These words are the foundation of this indictment, and the material, if not the only question, as to the relevancy, depends upon their meaning, or rather upon the question, whether they admit of no meaning or construction but one, the meaning alleged by the prosecutor, who argues, that they purport and intend to bind the party taking the oath to commit the crime of high treason. It is to be considered, whether the words have that treasonable meaning, or if that is not their meaning, it is evidently of no consequence what they mean.

The words of the oath now under consideration bind the party to *support the same*; and there has been some argument as to the meaning of *supporting the same*, as the words occur in this part of the oath. It was said for the prisoner, that when taken along with the previous words of the oath, the meaning of the whole is, that the party should persevere in his endeavours, and in particular, his endeavours to obtain annual parliaments and universal suffrage, and also to support the same, namely, the annual parliaments and universal suffrage, when obtained and recognized by law. According to this construction, the oath intended any thing but treason. It was to support a legal establishment when it should be obtained, and not even to support an attempt, though legal, to obtain a change of the existing laws. And this view of the oath seems to be perfectly well-founded. On the one hand, there is an incongruity in saying, that the party will support his own endeavours; and, on the other, the expression, "support the same," is a relative that can only apply to the last antecedent, unless it appears from the grammatical construction, or from the meaning of the con-

text, that the relative necessarily applies to former antecedents. But that is not the case here. There is a disjunction, not only in the sense, but in the grammatical construction, of the subject of annual parliaments and universal suffrage, from the previous part of the oath. The more natural construction of the obligation to "support the same" is obtained, therefore, by referring it to a support of the wished-for changes when recognized by law. And there is another consideration, which leads to the same determination of the question. There are many rules for the interpretation of words; but the great rule of interpretation in a criminal charge is, that in case of doubt, that construction which is most favourable to the accused must be adopted. And if the prisoner is entitled to the benefit of the rule I have just mentioned, I cannot see much difference between the interpretation offered on his part, and that which has been contended for by the prosecutor. For, whether the phrase, "support the same," shall be referred back merely to the proposed changes, when obtained, or to the endeavours to produce them, still it must be held, that the support to be given is intended as a legal, and not as an illegal support, and rather as a support of the law itself, to be appealed to in every stage of his endeavours by the person taking the oath, than as a support of illegal attempts to overturn it.

But the argument of the prosecutor is, that the clauses now under consideration do not merely bind the person taking the oath, to support his endeavours at innovation, but to "support the same to the utmost of his power, either by moral or physical strength as the case may require." The prosecutor seems to think, that these words complete the treasonable obligation, and leave no doubt whatever as to the meaning either of the party who administered, or of the party who took the oath. That there should be no doubt as to the meaning of these words, appears to be not a little extraordinary, when it is considered, that if they have any meaning at all, it is a meaning as vague, indefinite, and uncertain, as can be imagined. Yet the prosecutor thinks, that they can mean nothing but treason, and he will not allow that any other meaning can be put upon them. Even the uneducated people, for whose use the oath was contrived, must, without all doubt, have understood, that it was the purport of these words to bind them to commit treason!

These assertions are finely exemplified by the abortive attempt made in the indictment, to put any intelligible meaning upon the words. The prosecutor has not been able to apply them to any description of treason, excepting that constructive treason, which he would revive after it has been abolished for several centuries. And here it is proper to notice an inexcusable gloss in the indictment, as to the meaning of the words now under consideration. The words of the oath are, "I will support the same to the utmost of my power,

either by moral or physical strength;" but it is alleged in the indictment, that the treason was to be committed, "by effecting by physical force, the subversion," &c. Here the word *strength* is changed into the word *force*, a word of a different meaning. It has been said, that the words are synonymous. If that is the case, why change the one for the other? But they are not synonymous. It is very true, that on some occasions either word may be used, without much, if any, difference of meaning. But the same thing may be said of words, that so far from being synonymous, have significations that are very different. The distinction between strength and force is quite obvious. Strength refers to *power*,—force to the *violent use* of that power. Force always implies violence, but strength does not. A precept in the Holy Scriptures is thus expressed, "Thou shalt love the Lord thy God with all thy heart, and with all thy *strength*." How would this passage read with the word *force* instead of the word *strength*? To support with moral and physical strength does not mean that violence is to be used at all. So far from meaning that violence is to be used in attacking others, it does not necessarily mean *that* violence which may be used in resisting the violent attacks of others.

Thus, it has been assumed, with very little ceremony indeed, that the moral and physical strength referred to in this oath, was to be applied for the purposes of treason. It seems to be just as reasonable to take it for granted, that the moral and physical strength was to be employed in the commission of any *other crime*. Can a reform in parliament be promoted only by the commission of treason? No, it will be answered; but treason, if it was useful or necessary, was to be committed. Then, if the parties were not to shrink from the crime of treason if necessary for these purposes, it must be supposed that they would have been equally ready for the commission of any other crimes. But, I ask, whether, according to the meaning of this oath, the parties who took it were bound to commit murders, robberies, thefts, every sort of crimes, in order to promote reform in parliament? Is it possible that any human being can be so destitute of charity and common sense as to put that construction upon the oath? When I bind myself to forward the purposes of reform to the utmost of my power, by moral and physical strength, am I bound to commit all or any one of the crimes which have been mentioned? Must I rob on the highway in order to promote annual parliaments and universal suffrage? And if the oath is not an obligation to commit crimes generally, is it not absurd to say, that it is an obligation to commit the greatest of all crimes, the crime of treason? To maintain a proposition so monstrous, is the best example to prove the danger and atrocity of charges of constructive treason. Suppose one of the persons who are stated in the indictment to have been engaged in a conspiracy, but whose

names are not communicated, had been told that the oath being an obligation to support the plan of annual parliaments and universal suffrage to the utmost of his power, by moral and physical strength, so he was required to commit some great crime, an assassination for example. If such a conversation among these conspirators can be supposed, the person addressed might surely answer, I engaged to do every thing in my power to obtain annual parliaments and universal suffrage, but I have not engaged to do any thing that is against law—there is no such obligation in the oath. Could any one of the fraternity have replied, you are bound by the obligation, and must now perform the part you have undertaken: This assassination will support the cause of universal suffrage; and it is an act within your power. This reasoning would hardly serve; and if there is no obligation to commit a great crime, there is just as little to commit a small crime. The oath does not *purport* or *intend* to bind the party taking it to commit any crime whatever, or even to infringe the slightest rule of morality.

Nor is there any difference between a mere paction in such a case and an obligation strengthened by an oath, how tremendous soever. As to the present question, the cases are quite the same.

But it is said, that if the intentions of the parties were so innocent, why take an oath? Why this obligation to secrecy? I have answered that already. I do not know why there was an oath at all. I do not know why it was an oath of secrecy. I have heard, indeed, that some politicians have not the most absolute confidence in each other. There are animals known by the name of rats, of whom I sometimes read in the newspapers, who are said even to infest a certain great assembly. Some of those who were engaged in this association may perhaps have suspected that animals of that species might get amongst them, and, in order to prevent such an accident, they had recourse to the oath. Why was there an oath of secrecy? I see no reason why they should have bound themselves to secrecy. But is secrecy to imply the greatest atrocity of conduct? If they wished for secrecy, does it necessarily follow that they were to commit treason? Many enterprises require secrecy. That there were persons whom they did not wish to offend, might be a sufficient reason for their secrecy. It would be very unsafe, indeed, to infer the illegality of any combination from the circumstance that it is held together by an oath of secrecy, but it would be still more unsafe to infer a treasonable conspiracy upon such flimsy grounds. But the question is not, Whether the obligation to secrecy was right or wrong? The only question is, Whether there is in this oath an obligation to commit treason? The question is not, Whether the panel committed treason in any way? but it is, Whether there is in the oath any obligation to commit trea-

son? On these questions, I think it unnecessary to trouble your lordships with any further observations.

Lord Justice Clerk.—After the uncommonly able arguments which you have heard from both sides of the bar, the question for your lordships' consideration is, In what manner you are now to proceed in determining whether the present is a relevant indictment?

Lord Hermand.—I had no doubt in my mind, when I first saw the Indictment, that it was relevant. But a great deal has been said to-day on the competency of alleging one crime in order to prove another. I have formed no opinion on the objections which have been stated to the indictment; and being desirous to understand them thoroughly, I wish to see them discussed in informations. Several authorities have been cited, particularly by Mr. Cranstoun, and it would be proper to have them fully stated, before giving any opinion with regard to them.

Lord Gillies.—I am of the same opinion, and strongly wish to see Informations.

Lord Pitmilley.—I am particularly anxious to consider that point which we have heard debated, and which is of general importance—I mean, the question as to the admission of the narrative part of the indictment to proof.

With regard to the other objections, I have read all the authorities, and should have been ready to give my opinion upon them. It does not appear to me, that the cases of forgery alluded to are analogous to this case. If special acts of treason had been stated, the introductory part of the narrative might have been admitted to proof. But as the minor charge is not treason, but a different crime, my mind is not yet made up to the opinion that the indictment is relevant. As far as I am able to judge, I cannot help thinking that the panel, if acquitted on this indictment, might be again tried for treason.

Lord Justice Clerk.—I am much in the situation of my brother who has last spoken. In reference to the meaning of the oath, I have given great attention to what has been said; and I had looked into authorities, besides those referred to to-day.

As to the other point, it has been most ably argued, and is deserving of most serious and deliberate attention—whether it be competent to let the public prosecutor into a proof of the narrative of this indictment. That is a point which, in reference to this important case, and all other cases of a similar nature, is deserving of the most mature consideration. This, too, is the first time that an indictment has been brought before as founded upon this statute. I am quite clear, therefore, that the solemn and regular manner of deciding the points in question is, to have Informations prepared, in which the arguments may be fully exhausted.

INTERLOCUTOR.

9th April, 1817.

"The Lord Justice-Clerk, and Lords Commissioners of Justiciary, ordain parties' procurators to give in Informations upon the relevancy of the Indictment, to see and interchange these Informations, and to print, and lodge the same with the Clerk of Court in order to be recorded, and that within three weeks from this date: Continue the diet against the panel till Monday the 19th day of May next, at ten o'clock forenoon, in this place; and ordain parties, witnesses, assizers, and all concerned, then to attend, each under the pains of law; and the panel in the mean time to be carried back to the Castle of Edinburgh.

COURT OF JUSTICIARY.

MAY 19, 1817.

Present.

Rt. Hon. *David Boyle*, Lord Justice Clerk.
Lord Hermand.
Lord Gillies.
Lord Pitmilley.
Lord Reston.

Counsel for the Crown.

Rt. Hon. *Alexander Maconochie*, Lord Advocate [afterwards a lord of Session and Justiciary, with the title of Lord Meadowbank.]
James Wedderburn, Esq. Solicitor-General.
H. Home Drummond, Esq.

H. Warrender, W. S. Agent.

Counsel for William Edgar.

John Clerk, Esq.
Gen. Cranstoun, Esq.
Thos. Thomson, Esq.
James Moncrieff, Esq.
Francis Jeffrey, Esq.
J. P. Grant, Esq.
Henry Cockburn, Esq.
J. A. Murray, Esq.

G. W. Boyd, W. S. Agent.

William Edgar was placed at the bar.

Lord Justice Clerk.—William Edgar, attend to the indictment against you, which is now to be read.

"William Edgar present prisoner in the Castle of Edinburgh, you are indicted and accused, at the instance of Alexander Maconochie of Meadowbank, his majesty's advocate, for his majesty's interest: That albeit, by an act passed in the fifty-second year of his present majesty's reign, intituled, 'An act to render more effectual an act passed in the thirty-seventh year of his present majesty, for preventing the administer-

ing or taking unlawful oaths,' it is *inter alia* enacted, 'That every person who shall, in any manner or form whatsoever, administer, or cause to be administered, or be aiding or assisting at the administering, of any oath or engagement, purporting or intending to bind the person taking the same to commit any treason or murder, or any felony punishable by law with death, shall, on conviction thereof by due course of law, be adjudged guilty of felony, and suffer death as a felon, without benefit of clergy.' And further, by section fourth of the said act, it is enacted, 'That persons aiding and assisting at the administering of any such oath or engagement, as aforesaid, and persons causing any such oath or engagement to be administered, though not present at the administering thereof, shall be deemed principal offenders, and shall be tried as such; and on conviction thereof by due course of law, shall be adjudged guilty of felony, and shall suffer death as felons, without benefit of clergy; although the persons or person who actually administered such oath or engagement, if any such there shall be, shall not have been tried or convicted.' And further, by section sixth, of the said act, it is enacted, 'That any engagement or obligation whatsoever, in the nature of an oath, purporting or intending to bind the person taking the same to commit any treason or murder, or any felony punishable by law with death, shall be deemed an oath within the intent and meaning of this act, in whatever form or manner the same shall be administered or taken, and whether the same shall be actually administered by any person or persons to any other person or persons, or taken by any other person or persons, without any administration thereof by any other person or persons:' YET TRUE IT IS AND OF VERITY, that you, the said William Edgar, are guilty of the said crimes, or of one or more of them, actor, or art, and part: *In so far as you, the said William Edgar, did, at secret meetings, and on other occasions, at Glasgow, or in the immediate vicinity thereof, in the course of the months of November and December 1816, and of January and February, 1817, wickedly, maliciously, and traitorously administer, or cause to be administered, or did aid or assist at the administering, to a great number of persons, to the amount of several hundreds, an oath or engagement, or an obligation in the nature of an oath, binding, or purporting or intending to bind, the persons taking the same to commit treason; which oath, engagement, or obligation, was in the following terms, or to the following purport,—*' In awful presence of God, I, A B, do voluntarily swear, that I will per-

severe in my endeavouring to form a brotherhood of affection amongst Britons of every description, who are considered worthy of confidence; and that I will persevere in my endeavours to obtain for all the people in Great Britain and Ireland, not disqualified by crimes or insanity, the elective franchise, at the age of twenty-one, with free and equal representation, and annual parliaments; and that I will support the same to the utmost of my power, either by moral or physical strength, as the case may require: And I do further swear, that neither hopes, fears, rewards, or punishments, shall induce me to inform on, or give evidence against, any member or members collectively or individually, for any act or expression done or made, in or out, in this or similar societies, under the punishment of death, to be inflicted on me by any member or members of such societies. So help me God, and keep me steadfast.' Which oath, or engagement, or obligation, to the foregoing purport, did bind, or did purport or intend to bind the persons taking the same to commit treason, by effecting by physical strength the subversion of the established government, laws, and constitution of this kingdom, and especially by obtaining annual parliaments and universal suffrage by unlawful and violent means. And, more particularly, you, the said William Edgar, did upon the 1st day of January 1817, or on one or other of the days of that month, or of December immediately preceding, or of February immediately following, at a secret meeting, held in the house of William Leggat, change-keeper in King-street, Tradeston, in the vicinity of Glasgow, or elsewhere at Glasgow, or in the immediate vicinity thereof, wickedly, maliciously, and traitorously administer, or cause to be administered, or did aid or assist at the administering an oath or obligation in the terms above set forth, or to the same purport, to Peter Gibson, John M'Lauchlane, John Campbell, and Hugh Dickson, all present prisoners in the Castle of Edinburgh; as also to James M'Ewan, now or lately carding-master at Humphries Mill, Gorbals of Glasgow, and M'Dowal Pate, or Peat, now or lately weaver in Piccadilly-street, Anderson, in the vicinity of Glasgow, who, conscious of their guilt in the premises, have absconded and fled from justice; as also to John Connellton, or Congleton, now or lately cotton-spinner in Calton of Glasgow, or to one or other of them, and to other persons, whose names are to the Prosecutor unknown, the said oath, or engagement, or obligation, to the said purport, binding, or purporting to bind, the persons taking the same to commit treason, as said is. (2.) And further, you, the said William Edgar did,

upon the 4th day of January 1817, or on one or other of the days of that month, or of December immediately preceding, or of February immediately following, at a secret meeting held at the house of Neill Munn, inn-keeper and stabler in Ingram-street, Glasgow, or elsewhere at Glasgow, or in the immediate vicinity thereof, wickedly, maliciously, and traitorously administer, or cause to be administered, or did aid or assist at the administering an oath or obligation, in the terms above set forth, or to the same purport, to the said Peter Gibson, John M'Lauchlane John Campbell, Hugh Dickson, M'Dowal Pate, or Peat, and James M'Ewan; as also to James Hood, present prisoner in the Castle of Edinburgh, Andrew Sommerville, John Buchanan, and James Robertson, all now or lately prisoners in the Tolbooth of Glasgow, or to one or other of them, and to other persons, whose names are to the prosecutor unknown, the said, oath, or engagement, or obligation, to the said purport, binding, or purporting to bind, the persons taking the same to commit treason, as said is. And you, the said William Edgar, having been apprehended and taken before Daniel Hamilton, Esquire, one of the Sheriffs-substitute of Lanarkshire, did, in his presence, at Glasgow, on the 6th day of March 1817, emit and subscribe a declaration; and having been taken before Robert Hamilton, Esquire, Sheriff-depute of Lanarkshire, you did, in his presence, at Glasgow, upon the 7th and 8th days of March 1817, emit and subscribe two several declarations; which declarations, being to be used in evidence against you at your trial, will be lodged in due time in the hands of the Clerk of the High Court of Justiciary, before which you are to be tried, that you may have an opportunity of seeing the same. At least, times and places foresaid, the said oath, or engagement, or obligation, to the same purport, binding, or purporting to bind, the persons taking the same to commit treason, as said is, was wickedly, maliciously, and traitorously administered, or caused to be administered; and some persons did aid or assist at the administering thereof; and you the said William Edgar are guilty thereof, actor, or art and part. All which or part thereof, being found proven by the verdict of an assize, before the Lord Justice General, the Lord Justice Clerk, and Lords Commissioners of Justiciary, you the said William Edgar ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming.

"H. HOME DRUMMOND, A. D."

LIST OF WITNESSES.

1. *Robert Hamilton*, Esq. sheriff-depute of Lanarkshire.

2. *Daniel Hamilton*, Esq. one of the sheriffs-substitute of Lanarkshire.
 3. *Daniel M'Callum*, clerk to John Drysdale, sheriff-clerk of Lanarkshire.
 4. *Matthew Burns*, clerk to George Salmond, procurator-fiscal of Lanarkshire.
 5. *John Leslie*, clerk to the said John Drysdale.
 6. *Joseph Reid*, writer in Glasgow.
 7. *Alexander Calder*, sheriff-officer in Glasgow.
 8. *James Thomson*, clerk to the said John Drysdale.
 9. *Alexander Hunter*, change-keeper, Old Wynd of Glasgow.
 10. *Marion M'Laren*, or *M'Lachlan*, now or lately servant to the said Alexander Hunter.
 11. *John Robertson*, inn-keeper and stabler, Gallowgate Glasgow.
 12. *Agnes Campbell*, wife of Thomas Dow, steam-boiler maker and smith at Girdwood and Company's foundry in Hutchesontown, in the vicinity of Glasgow.
 13. *Janet Rentoul*, now or lately servant to Neill Munn, innkeeper and stabler in Ingram-street, Glasgow.
 14. *Alison Wilson*, now or lately servant to the said Neill Munn.
 15. *Matthew Fyfe*, spirit-dealer in Wilson-street, Glasgow.
 16. *Jean Boyd*, wife of the said Matthew Fyfe.
 17. *William Leggat*, change-keeper, in King-street, corner of Centre-street, Trades-ton, in the vicinity of Glasgow.
 18. *John Mitchell*, weaver, residing in Wilkie's Land, Charles-street, Calton of Glasgow.
 19. *Hugh Dickson*, present prisoner in the Castle of Edinburgh.
 20. *Peter Gibson*, present prisoner there.
 21. *John M'Lauchlane*, present prisoner there.
 22. *William Simpson*, present prisoner there.
 23. *James Hood*, present prisoner there.
 24. *John Campbell*, present prisoner there.
 25. *Thomas Sinclair*, present prisoner there.
- H. HOME DRUMMOND, A. D.

LIST OF ASSIZE.

County of Edinburgh.

Francis Carteret Scott, of Ballerno.
Richard Woolcy, of Whitehouse.
James White, tobacconist in Dalkeith.
Robert Lyle, baker there.
John Wood, merchant there.
John Brown, farmer, Carrington.
Andrew Johnston, farmer, Primrose-barns.

County of Haddington.

William Aicheson, junior, of Drummore.
John Sommervill of Moreham.
William Hay, farmer, Howden.
John Brodie, farmer, West Fenton.
Robert Hope, farmer, Fenton.

County of Linlithgow.

William Glen of Mains.

William Dawson, younger, Bonnytown.
John Trotter, farmer at Stacks.
Robert Taylor, residing at Blackness.
George Turnbull, farmer at Northbank.

City of Edinburgh.

Robert Fraser, jeweller in Edinburgh.
Thomas Richardson, merchant-tailor there.
David Whitelaw, watch-maker there.
Peter Fiddie, trunk-maker there.
William Trotter, upholsterer there.
Alexander Russell, coach-maker there.
John Inverarity, upholsterer there.
George Yale, merchant there.
Alexander Ainslie, saddler there.
John Steel, confectioner there.
James Innes, gunsmith there.
Daniel Forrest, hosier there.
Peter Sakers, saddler there.
George Hunter, merchant there.
William Ross, tailor there.
Charles M'Lean, draper there.
John Laing, saddler there.
John M'Pherson, tailor there.
Francis Davidson, confectioner there.
William Cooper, boot-maker there.
William Dumbreck, hotel-keeper there.

Town of Leith.

John M'Kenzie, merchant in Leith.
Archibald Cleghorn, corn-merchant there.
Thomas Morton, ship-builder there.
Robert Paterson, painter there.
Charles Robertson, merchant there.
John Sanders, agent there.
John Glover, wright there.

AD. GILLIES.
D. MONYPENNY.
DAVID DOUGLAS.

Lord Justice Clerk.—William Edgar, what do you say to this indictment?—Are you guilty or not guilty of the charges contained in it?

William Edgar.—Not guilty, my Lord.

Mr. Cranston.—The prisoner pleads to the indictment which has just been read, I have to state to your lordships, that he is advised to object to the competency of the present proceeding; and I humbly submit that this is the proper time for stating the objection to your lordships.

Your lordships will recollect that the prisoner at the bar was lately indicted upon the statute the 52nd Geo. 3, for the crime of administering unlawful oaths, binding, or purporting or intending to bind, the takers to commit the crime of treason. That indictment was regularly served upon the prisoner—he was brought to the bar—he pleaded not guilty—and your lordships, upon hearing a debate upon the relevancy, appointed informations to be given in, and continued the time for doing so until this day.

My lords, that criminal prosecution is still

in dependence against the prisoner. The diet has not yet been deserted so far as I know. I need not tell your lordships, that his Majesty's Advocate cannot desert a prosecution, either *simpliciter* or *pro loco et tempore*, without the permission of your lordships. By deserting *simpliciter*, I mean here, deserting with a view to try upon a new indictment for the same crime.

While the first prosecution was thus in dependence, his Majesty's Advocate has thought fit to execute a second indictment against my client, calling him to answer at your bar for precisely the same crime as was charged in the first indictment. I submit to your lordships, that this proceeding is altogether incompetent—because the diet in the first indictment is not yet deserted; and that it would be equally incompetent to proceed at present on the second indictment, even if, on the motion of the lord advocate, the first should now be deserted. I shall state, in very few words, the grounds upon which I think our objection is irresistible.

It is known to your lordships, that by the criminal law of this country, as now firmly established, every person who is brought to the bar upon a criminal charge is entitled to have the *induciae* of fifteen free days. What benefit could be derived from the *induciae* if he could be brought to trial, and during the dependence of that trial *induciae* might be running against him all the while for another trial on account of the same crime? Why, he would be placed in a situation in which the law certainly never meant him to be placed; he would be perplexed and embarrassed, by being under the necessity of defending two actions subsisting together at one and the same time. Observe how far this principle, if once admitted would go. The prisoner is indicted, he is brought to the bar, an objection is stated to the relevancy of the indictment, and your lordships, after an argument of twelve hours upon the relevancy, find the indictment irrelevant. The next moment his Majesty's Advocate takes a new indictment out of his pocket, and the prisoner is immediately put again upon his trial for the very same offence. Well, the second day you have an argument upon the relevancy of this second indictment, an argument which also lasts twelve hours; and when that indictment is found irrelevant, what happens next? A third indictment is produced by his Majesty's Advocate, and he insists that the prisoner shall again be tried. And thus there might be fifteen different indictments, under which the prisoner is actually kept upon his trial for fifteen days, being the whole *induciae* contained in the first indictment; and upon the sixteenth charge, the panel might be brought to trial upon a relevant indictment, and without having had one moment's time to prepare his defence.

I may be told that this is stating an extreme case, one which is not likely to happen. Such a case certainly may not happen while my

friend is lord advocate; but if what I have stated might happen in an extreme case, it is enough for my argument. Every possible danger of this kind ought to be guarded against, for experience teaches us that criminal prosecutions are often resorted to from ambition, revenge, and other improper motives.

As a general rule, therefore, in the law of Scotland, I affirm that if a person is indicted for a crime, and if he comes to the bar, and pleads to that indictment, then there is a depending process against him, *during which* he cannot again be cited to answer for the same charge, and in that way be deprived entirely of the benefit of his *inducie*. The moment he has pleaded to his indictment, it is incompetent to have another indictment running against him for the same offence.

There are various ways in which I might illustrate the hardship and oppression which would result from a different rule. Suppose a panel has pleaded to an indictment, and has been actually put upon his trial here, if the objection which I am now stating is not a good objection, his Majesty's Advocate might raise another indictment, requiring him to take his trial at a distance, for instance at Aberdeen, the day after the diet of the first indictment, which is to be tried at Edinburgh, and that for the very purpose of deserting the first indictment and proceeding upon the second. In this very case it is possible that the panel may have fifty witnesses to examine, and of course he is bound to have them here to-day in case the trial should go on on the former indictment. But if the former is deserted, and a new one called at Aberdeen to-morrow, in what manner, I would ask, is the panel to transport his witnesses to Aberdeen? The *inducie* are given by law for the very purpose of protecting the accused against surprises of this kind; but the practice attempted on the part of the Crown would defeat that purpose.

It is in vain to say that the Court would interfere to give redress, if an oppressive proceeding of the nature I have supposed were to be attempted. That plea was once urged; when a prosecutor, in defiance of all law, had not given the ordinary *inducie*, and I am sorry to say, that it was listened to by the Court. The libel contained *inducie* of twelve days only; and when the panel complained, he was told, that if he had applied to the Court for longer time, it would have been allowed. The objection was accordingly repelled, but, as Mr. Hume justly observes, it was most improperly repelled. If the ordinary rules of law, settled by the practice of centuries, are to be dispensed with, and a prisoner rolled over upon the Court for redress, is it enough to say, that he will obtain as a favour, what he is entitled to demand as a right? If this be the case, all security, all liberty is at an end.

Thus various and very great hardships would result, if you once admit, that after a person

has pleaded to one criminal prosecution, and while it is in dependence—for example, while informations are preparing on the relevancy—the *inducie* of another prosecution for the same crime may be current.

I do not say that the question which I am now stating to your lordships has been decided *in terminis* by the Court. If it has so been decided, it has escaped my observation, and the learned counsel upon the other side of the bar will mention the cases in which the objection has occurred, and has been repelled. For any thing that I know, there may be instances of trials having proceeded on indictments raised in the same manner as the present; but that must have happened where the objection was not stated; and you will easily see, that in many cases it might be for the interest of the panel to wave the objection. In many cases a prisoner would wish to be tried, without any *inducie*; for instance, in a charge of a subordinate or inferior nature, there may often be an interest on the part of the prisoner to wave this objection. But what I found upon is this, that, as far as I have been able to discover, this objection has not been stated and repelled *in terminis*.

But though I cannot refer to a precedent in which it has been sustained, I think there has been a case decided which appears to me to proceed on the very same principle, and to illustrate and support the argument which I have now the honour to maintain. There are instances of half a dozen indictments having been served upon a prisoner, one after another, and calling him to attend at the bar at different times; and, in particular, that happened in the celebrated case of colonel Francis Charteris. Four different libels were executed against him to take his trial for the same crime, all calling him to appear in Court at different times; and when he appeared upon the first of these indictments, he stated that he was not bound to plead at all, until the lord advocate selected the indictment upon which he intended to carry on the trial; and the Court found, or it was admitted on the part of the prosecution, that this was necessary; and accordingly, before the trial proceeded, it was necessary to desert three of the indictments—and when they were so deserted, then, and not till then, was colonel Charteris required to plead.

Is not that case precisely the same in principle as the present? For, if before colonel Charteris pleaded, every indictment then in dependence but one was necessarily deserted,—now that my client has pleaded, there being but one indictment when he pleaded, it follows for the same reason, that other three indictments cannot be hung over his head. If you do not support this objection, you place my client in that situation in which it was decided that colonel Charteris could not be placed. If colonel Charteris had pleaded to his first indictment, while the others were in suspense, he would have been in the situation

in which it is wished to place my client at present. The principle of the rule in colonel Charteris's case is so well laid down by the learned author of the Commentaries, that I cannot refrain from stating it in his words. In the 4th vol. of Mr. Hume's works, or the 2nd vol. upon the Law of Scotland, as to the trial of Crimes, page 34, after having first stated that the Court erroneously and improperly, in two preceding cases, had repelled that objection, he proceeds to state the case of Charteris, "On the one hand, the prosecutor cannot say, that he is hardly dealt with in being put to make his choice among his several libels, whereof some one at least ought to be correct, and executed in proper form. On the other hand, the panel suffers a disadvantage in conducting his defence, unless such an election shall be made. For there may be blunders in the body of one of those libels, or in the list of witnesses, or in the manner of execution against the panel or witnesses, which may be more or less available to him, and may, perhaps, serve to his acquittal, if the prosecutor insist exclusively on that one. Whereas, according to the latitude allowed in Lindsay's case, even after making good such objections, the panel in nowise profits by his success therein, and is thus perplexed and encumbered with the care of a double set of pleas. I learn from a printed petition and answers (for they are not in the record), that in the case of colonel Charteris, the panel had been served with no fewer than four libels, calling him to several diets, and otherwise differing one from another; and of this proceeding he complains, and insists that the prosecutor shall specify the ditty on which he intends to go to trial. The prosecutor does so accordingly, in his answers to the petition; and it appears from the informations in the case, that the colonel never had to plead to any of those libels but one, which alone appears in the record."

You therefore see, that before colonel Charteris would open his mouth upon that indictment, he was entitled to have every other indictment for the same crime put out of the way.

The lord advocate has followed a different course here, for he first raised one indictment, to which the panel pleaded; and after your lordships had ordered informations, thereby continuing the dependence of the trial, which at this very moment has not been deserted—I say pending that process to which the prisoner pleaded, he has been cited by another indictment, which is also now over his head; and he, and his counsel if they have done their duty, have been encumbered and perplexed fifteen days in attending to different sets of pleas in these prosecutions. If the objection in the case of colonel Charteris was sustained, you ought to sustain the objection in this case also.

It may perhaps be maintained, but there is no principle to bear out the statement, that the second indictment, virtually imports an abandonment of the first indictment. An indictment

may be abandoned before the panel is brought into court and pleads. The lord advocate may bring twenty indictments; but before bringing the panel to plead, he must desert all of them but one. And I ask, Can any case be pointed out to me, of three or four indictments brought against an individual, and of his being brought to trial, not upon the last, but on the first of these indictments? The principle is, that, where several have been served upon a panel, the second is understood to be a virtual desertion of the first, the third of the second, and so forth. The prisoner is always entitled to plead to one only, and that is always the last. But the principle by which a subsequent indictment is held to imply an abandonment of a former indictment, cannot apply in the case before us; for the moment that issue is joined between the prosecutor and the panel, it is no longer in the power of the public prosecutor to abandon the indictment, unless he do it for ever. When the prisoner has pleaded to an indictment, he is then in *manibus curiæ*, and the prosecutor must have the express sanction of the Court for the deserting of the libel. This is laid down in so many words by the learned Commentator at the 28th page of the volume already mentioned: "It is also a case which sometimes happens, that, though still resolved on bringing the panel to justice, the prosecutor sees cause, however, not to insist in the trial of him on that particular libel. Because, perhaps, he has discovered some flaw in it, or the executions thereof; or on account of new and material evidence which has lately come to his knowledge, and which requires an addition to his list of witnesses, or may occasion a difference in the laying of his charge. In situations of this sort, which, notwithstanding all diligence on the prosecutor's part, must sometimes happen, it is necessary to the advancement of justice, that he have the power of deserting his present libel, without prejudice to his right of insisting anew, at the time, and in the form, which he shall find advisable. If indeed he had the absolute and uncontrolled privilege of throwing up his process as often, and for what causes soever he pleased; this would be dangerous to the panel, who might thus, under false or affected pretences, be harassed with repeated libels. Our custom does not therefore trust the prosecutor to that extent, but allows him only to move the court, to desert the diet *pro loco et tempore*; in which request they may refuse to gratify him, if they see cause to believe that he intends any thing oppressive or improper, or if they are not satisfied that there are good reasons for such an indulgence. It is true, the style has crept into practice, of the prosecutor deserting the diet; because it so often happens that his motion for such a purpose is successful. But in truth this is a loose and inaccurate expression. For the act of desertion is not his act, but that of the Court; without whose permission and deliverance the process cannot be withdrawn in this temporary form. And, indeed, if he be a private prose-

Factor, the Court have already caution from him to insist on that libel; and to this they may hold him, and refuse to give him new letters, if they see cause. Accordingly, in the debate on the case of Archibald (March 1, 1768), the prosecutor frankly disowns all pretensions to any such arbitrary power. His majesty's solicitor represents, that he observes in the information, on the part of the panel, very alarming consequences are endeavoured to be grafted on the doctrine pled in behalf of the prosecutor in this case; as if it gave to the public prosecutor a very arbitrary power of oppressing the subjects in this country, by deserting diets as often as his fancy suggested: but as all the alarming consequences pointed out are founded upon the supposition of a doctrine which he never meant to plead, he thinks it now proper to have this matter clearly understood; as the public prosecutor never pleaded, nor does he desire it to be believed by the subjects in this country, that he has any arbitrary power of deserting diets without the authority, and intervention of Court: which circumstance totally removes all those apprehensions which the counsel for the panel has grafted upon the supposition, that an arbitrary power of deserting diets was claimed in this, or in any other cause, by the public prosecutor." And it is stated in still stronger terms in his notes as to desertions *simpliciter*, and desertions *pro loco et tempore*.

If this were an open point, I cannot hesitate for a moment to believe, that your lordships would decide it in the manner which I now suggest; for the hardships which would arise from any other decision are plain and great. But I submit that it is not open; for though it was not decided *in terminis* in the case of colonel Charteris, the objection there maintained is exactly the same in principle. Upon these grounds I humbly submit to your lordships, that the objection which I have stated is well founded.

I think I have already observed, that the mistake cannot be rectified by the public prosecutor deserting the former prosecution at this stage of the business. The reason is, that the panel has already suffered all the perplexity and embarrassment which two co-existing prosecutions for the same crime must necessarily occasion; and he has in consequence been deprived of the benefit of his *inducie*. Both indictments have been suspended over his head; and the desertion of the first now at the very hour of trial, will never authorize you to proceed with the second. To what hardship was colonel Charteris exposed in going to trial upon one indictment, while others were hanging over his head, to which the prisoner is not exposed in the present case? Colonel Charteris knew well, that if he was once sent to a jury in one indictment, the rest were for ever at an end. But the Court thought, that he was not bound ~~come to plead~~ with four indictments hanging over him; that he was not bound to take his chance of the relevancy being argued in one of these pro-

secutions, and the verdict returned in another. You would not force him into the preliminary step of pleading and arguing the relevancy until every indictment but one was withdrawn. Now, I beg leave to ask the question where is the difference between pleading to one indictment, and having other three afterwards served; or having all the four served, and being compelled to plead to one? In the first case, just as much as in the second, the four prosecutions are co-existent, and that is the hardship complained of. The prosecutor has placed my client in the very same predicament in which you found colonel Charteris could not be placed.

I maintain, therefore, that the second indictment was served erroneously, because it was served while the prisoner was under trial for the crime charged in that indictment. For it cannot be disputed, that the prisoner is under trial from the moment that he pleads, although, according to our forms, the jury have not then entered upon their functions.

Now, if a prisoner can be brought again and again to trial for the same crime,—and he may be brought twenty times to trial for the same crime, while the act 1701 is suspended, as it is at present,—it is but fair that he should have fifteen free days between each of these trials; namely, the ordinary *inducie* of the law.

If you once admit the principle on which the lord advocate proceeds, you might have these twenty trials going on for twenty consecutive days, without respite either to the prisoner or to yourselves. I beg to ask, If this would not only be to harass and perplex him, but to deprive him altogether of the benefit of his *inducie*? Could fifteen days so spent be called fifteen days allowed for preparation? The prisoner would be perfectly confounded, not knowing upon what day, or under what indictment, he was to be sent to the jury.

I humbly submit, therefore, that the point is clear and established in principle, that the *inducie* of no one indictment can run, even after the prisoner has pleaded to another indictment for the same crime, consequently, although your lordships were to allow the lord advocate to desert the first indictment, that the prisoner, not having had his *inducie* under the second, is not bound to plead to it.

Mr. Home Drummond.—I do not think that it is necessary for me to say much in answer to this objection, as the point has been settled in practice long ago. The whole question in discussion here seems to be, whether it is necessary now for the prosecutor to pass expressly from the other indictment, or whether it is already virtually passed from? The learned gentleman was quite incorrect in speaking of the prosecutor "deserting the indictment," instead of "passing" from it; as it is not the indictment which is said to be deserted, but the diet and besides, the desertion is not the act of the prosecutor, but of the Court. If the diet were to be deserted, there might be a doubt whether both indictments would not

thereby be extinguished, as the diet of both happens to fall on the same day. Further than this, the prosecutor can have no interest in objecting to any mode of extinguishing the first libel. He could have no other motive in not having recourse to the form of moving the Court to desert the diet; and he conceived that he was following a simpler course, and one less calculated to create trouble and delay.

I happen to have looked into the practice of late years as to the point in question, and I maintain, that the proceedings in this case are agreeable to the practice which your lordships have sanctioned and shall mention the cases that have occurred. Lindsay Crawford was indicted to stand trial on the 9th of January 1812. The diet was continued, on the motion of his own counsel, to the 3rd of February; before which 3rd of February new criminal letters were raised against the panel; and the trial proceeded on the criminal letters, without any notice being taken of the first indictment, though the trial on the criminal letters took place on the same day, the 3rd of February.

Mr. Murray.—Had he pleaded?

Mr. Drummond.—He had not. He had come into court, and the diet was continued upon the motion of his own counsel. It is of no consequence to the principle of the objection whether the panel pleaded to the indictment or not; but, at all events, there are cases enough where this proceeding has taken place after panels have pleaded.

The very next case, that of Thomas Somerville, was one of that description. He was indicted to stand trial on the 25th of January 1813. On that day a long pleading took place upon the relevancy, consequently he did plead to the indictment. There could not have been a debate, if he had not pleaded not guilty. Informations on the relevancy were ordered to be given in on the 15th of February; and before that time, new criminal letters were raised which fell upon the same day, the 15th of February. I took a note at the time of a conversation on the bench as to the particular objection which has now been stated, and which I beg leave to read. I see two gentlemen on the other side of the bar, who can correct me if I am inaccurate, who I remember to have been counsel in that cause. "Lord Hermand asked, if it was not proper in such a case to desert former diet *pro loco et tempore*?—Objected, That former indictment abandoned by service of this. And Court said they would adhere to the practice, and case proceeded." I had added this remark to the note; "Had not the diet fallen upon the same day, it would have dropped out of the record, by the passing of the day without its being called." Now, can the prosecutor be compelled to appear or insist in any libel he does not choose to insist in? and if not, must not the diet fall and be dropt for want of an instance?

Upon the 13th of June 1814, John Horn

was brought to the bar on a charge of forgery. Pleadings at great length took place on the relevancy of the indictment, the panel having pleaded not guilty. Informations were ordered to be given in on the 6th of July, and similar proceedings took place. Before that day a new indictment had been served, the diet whereof fell upon an earlier day, and upon that day informations were ordered of new upon the new indictment.

There was also the recent case of the Thistle Bank of Glasgow against Bell and Douglas. After the panel Douglas had pleaded guilty, informations were ordered, and a new indictment was, in the mean time, served upon the panel, which was understood, as in the former cases, to have extinguished the first.

These are all the cases since 1811, in which it was possible for this objection to occur; and the same practice took place in all of them that has been followed here, which could not have happened if this objection had been well founded. The plea of its having passed *sub silentio* cannot be maintained, as it is the duty of the Court to see that every thing shall go on according to the proper forms of law, a duty which the Court at all times discharge, whether the panel's counsel think it for their interest to state objections or not. A stronger example of this cannot be given than that very case of Douglas, where the Court ordered informations on the relevancy of an indictment to which the panel had pleaded guilty.

The embarrassment of the panel with different libels, and the other evils complained of, are entirely imaginary. The service of a new indictment, or at least the calling of the diet, extinguishes the old one; and there is no subsisting indictment but the last one which is served on the panel. If any diet were to be deserted at all, it would be the diet of the last, as no notice could be taken of the first. If, however, your lordships should have any doubt upon the subject, the prosecutor will pass from the indictment, or will move for a desertion, or follow any course that the Court may think best calculated to put an end to the first indictment, if its existence should still be thought possible. He has no wish to maintain any argument on the subject; only it is his opinion, that by the service of a second indictment he has abandoned and virtually passed from and extinguished the first.

Lord Advocate.—After the statement which has been given by Mr. Drummond, I do not mean to detain you by entering into a question, which I understand to be shut by the uniform practice of your lordships. But I think it necessary to advert to one point in Mr. Cranstoun's speech. He stated, that, for some time past, the counsel for the panel had thought it incumbent on them to attend, not only to this indictment, but also to the last, in which informations were ordered on the relevancy. He ought to have stated—and as I know his fairness, I think it must have been by omission that he did not state—that more

than a month before the panel was served with this indictment, notice was given to his counsel by myself, that it was not intended to prosecute the first indictment, but to serve him with another. I think it necessary, in vindication of the public prosecutor, to state this to your lordships, as it shews there was no intention to oppress the panel, or to give his counsel any needless trouble.

On the point itself, I state to you, that not only since 1812 has this point been understood to be shut, but in all the cases before, this was the uniform practice. In the case of Mendham, there was a long argument whether the issuing of notes in England could be stated in this Court, on the ground of the crime in the one country, being a continuation of the crime committed in the other. After the panel pleaded upon that, informations were ordered. It was then thought the better mode of proceeding to abandon that indictment, and to give a new one, which was done while informations were in dependence; and in that case, where it is known to your lordships that every attempt was made to save the individual then at the bar, this point was understood to be shut.

The point just comes to this, that, where the public prosecutor has raised an indictment, it is competent to him, antecedent to pleading before a Jury, to abandon the indictment and raise a second. It appears to me that the circumstance of a pleading on the relevancy having taken place, cannot prevent the public prosecutor from abandoning the indictment when he thinks fit, and bringing a new indictment. Taking both the principle and invariable practice into view, there cannot be a doubt in the case. In support of what was stated by Mr. Drummond, the case of colonel Charteris is in point. If it had not been held that the last indictment was a virtual passing from the former ones, all of them would have appeared on the record. But here is only one upon the record; therefore the service of the second was a virtual abandonment of the first. Upon these grounds, I have no doubt of the competency of the proceeding in this case.

Mr. Clerk.—If the objection stated by Mr. Cranstoun has any solidity in it, I am sure no good answer has been given to it on the other side of the bar, and indeed no answer at all. The learned gentlemen were pleased to talk of a practice since 1812, of which they have shown your lordships no record; and one of them talks of a case brought into Court a number of years ago, in which, he says, a first indictment was abandoned, and a second served on the panel, upon which second indictment the trial proceeded. As to the circumstances of that case, we have the authority of my learned friend, which is, no doubt, considerable; but it is not an authority upon which, in duty to my client, I am bound to rely. And to what do these cases amount after all? Just to this, that the panel allowed him-

self to be tried upon a second indictment without making any objection to it. It is very easy to account for all these cases. It very frequently happens, that it would not avail a panel to have his trial put off—he is prepared to meet it, and his counsel being ready, he would not wish to put off the trial, or incur any further delay.

We, who are counsel in this case, consulted together whether it was worth while to state this objection, as it would merely lead to delay. During one period of the consultation I was of opinion, that it was not worth while to state the objection, being all the while satisfied it was a good objection. What I have said is sufficient to account for all the cases which have been cited, even supposing they were stated accurately. In general, I may observe this, that it often happens in cases coming before this Court, that the gentlemen who attend for the panel are better acquainted with civil, than with criminal trials. Such an objection as we now maintain would very possibly not have occurred to me. But it stands on the ground of authority and of principle, and it must be considered well founded. Upon what is it founded? *First*, It is positively laid down by Mr. Hume, who mentions his authorities, and he himself is a great authority, that the prosecutor, public or private, cannot abandon his indictment after the relevancy is pleaded to. He has no right to give it up. He has no more right than any other litigant has to give up any case without the leave of the Court. I apprehend you cannot reasonably have any doubt as to this point, that no prosecutor can of his own authority desert the diet, or abandon the libel, or prevent the Court from discussing that libel. The matter must be judged of by the Court. This is expressly laid down by Mr. Hume, and I am surprised my learned friend should use his own authority against Mr. Hume's authority, without offering any argument upon the subject. "It is also a case which sometimes happens," says Mr. Hume,* "that though still resolved on bringing the panel to justice, the prosecutor sees cause, however, not to insist on the trial of him on that particular libel. Because, perhaps, he has discovered some flaw in it, or the executions thereof, or on account of new and material evidence which has lately come to his knowledge, and which requires an addition to his list of witnesses, or may occasion a difference in the laying of his charge. In situations of this sort, which, notwithstanding all due pains on the prosecutor's part, must sometimes happen, it is necessary to the advancement of justice that he have the power of deserting his present libel, without prejudice to his right of insisting anew at the time, and in the form which he shall find advisable. If, indeed, he had the absolute and uncontrolled privilege of throwing up his process as often, and for what

causes sever he pleased, this would be dangerous to the panel, who might thus, under false or affected pretences, be harassed with repeated libels. Our custom does not, therefore, trust the prosecutor to that extent, but allows him only to move the Court to desert the diet *pro loco et tempore*; in which request they may refuse to gratify him, if they see cause to believe that he intends any thing oppressive or improper, or if they are not satisfied that there are good reasons for such an indulgence. It is true the style has crept into practice, of the prosecutor deserting the diet, because it so often happens that his motion for such a purpose is successful. But in truth this is a loose and inaccurate expression: for the act of desertion is not his act, but that of the Court, without whose permission and deliverance the process cannot be withdrawn in this temporary form." There is a great deal more to the same effect.

Lord Gillies.—Mr. Drummond says this is not a desertion of the diet, but an abandonment of the indictment.

Mr. Clerk.—It is clear that the whole of this passage applies to the case now before the Court. I shall put this case to your lordships. Suppose that a libel is served on a panel with a list of witnesses annexed, that the panel objects to the relevancy, that the Court takes the libel into consideration, and that, in the course of the argument, the prosecutor discovers he could strengthen his case by throwing up that libel. Suppose that he therefore brings a new libel with a new list of witnesses: May not the panel reasonably object, I have disclosed my witnesses in pleading to the former libel, and therefore it is improper that the prosecutor should have power to throw up the former and bring a new libel accusing me for the same crime?

What Mr. Hume says is, that the Court may allow the prosecutor to throw up, or desert his libel, but that he cannot do so without leave of the Court. Were the prosecutor to be allowed of himself to desert his indictment and bring a new one, he might make such an attack on the prisoner, as the prisoner might find difficulty to parry. That would be a hardship on the prisoner, and one produced partly by the discussion on the first indictment. And if the first indictment were to be discussed, and the panel to be tried on it, the case might be such, or the very evidence such, as to entitle him to an absolvitor. That is an important consideration. The authorities are clear with me. The prosecutor of himself has no right to throw up his libel after it has been pleaded to. "The act of desertion is not his act, but that of the Court, without whose permission and deliverance the process cannot be withdrawn in this temporary form."

A private prosecutor must give caution to insist in his libel. "Indeed if he be a private prosecutor, the Court have already caution from him to insist on that libel, and to this

they may hold him and refuse to give new letters if they see cause. Accordingly, in the debate in the case of Archibald, the prosecutor frankly disowns all pretensions to any such arbitrary power. His majesty's solicitor represents,—that he observes, in the information on the part of the panel, very alarming consequences are endeavoured to be grafted on the doctrine pled in behalf of the prosecutor in this case, as if it gave to the public prosecutor a very arbitrary power of oppressing the subjects in this country, by deserting diets as often as his fancy suggested. But as all the alarming consequences pointed out are founded upon the supposition of a doctrine which he never meant to plead, he thinks it now proper to have this matter clearly understood, as the public prosecutor never pleaded, nor does he desire it to be believed by the subjects in this country, that he has any arbitrary power of deserting diets without the authority and intervention of the Court; which circumstance totally removes all those apprehensions which the counsel for the panel has grafted upon the supposition that an arbitrary power of deserting diets was claimed in this or in any other case by the public prosecutor."

Really, my lord, after reading that passage, and the whole of the passages in Mr. Hume, I submit that it is quite idle to maintain that the public prosecutor has it in his power in all cases to desert his libel, and throw up his process. He may do so before the panel has pleaded; but the moment the panel has joined issue with him, then the pleasure of the Court must be taken as to a new trial.

The assertion is manifestly groundless, that the public prosecutor may abandon an indictment after it has been pleaded to, and bring a new indictment. Before such pleading he may execute a new indictment, which is understood as an abandonment of the old. But it is contrary to principle and authority to suppose, that, after a panel has pleaded, the prosecutor may throw up his libel, and have recourse to a new indictment. He may be compelled to discuss the libel to which the panel has pleaded. If it be thrown out upon the relevancy, the prosecutor may bring forward a new indictment. But suppose that it is not thrown out upon the relevancy, that the case comes to trial, and that the panel obtains an absolvitor upon that trial, the prosecutor cannot bring a new trial for the offence thus charged. Therefore, I say that the public prosecutor has no right, without the authority of the Court, to abandon this indictment; and although he has taken upon himself to execute a new indictment, he cannot abandon the old indictment without the authority of the Court. If this proposition is true, the public prosecutor must do something more, or you must do something more for him, before he is entitled to proceed on the indictment before your lordships.

As to the case of Colonel Charteris, we are told in answer, that for some time past it has

been the practice for the public prosecutor to abandon a first indictment, without taking any notice of it to the Court at all, but merely by executing a new indictment. The panel may no doubt be tried on this new indictment, if he is more afraid of the old than the new one. But whenever the point of objection is stated, you must go back to the principles and judgments of your lordships in parallel cases; and upon these it is clear, that till the public prosecutor gets the first indictment out of his way, which he has not yet done, he cannot proceed on the second.

If he should move to desert the diet simpliciter on the first libel, which he may do, the question will be, Whether he is entitled to go on *de plano* with the second? We have been only paving the way for this last question, which is the true subject for your consideration. The question comes to be, Whether the public prosecutor, upon now giving up the first libel, is entitled to proceed on the second? We submit that he is not. For it appears from the case of *Charteris*, that the Court would not allow the public prosecutor to have in dependence several libels at the same time. They forced him to abandon three of his libels altogether, and then colonel *Charteris* went to trial on the fourth. Supposing it had been dismissed upon the relevancy, and that the public prosecutor had been allowed to depart from that libel by the Court, he might have brought a new indictment. But I ask this, upon which the whole point now depends; Would it have been competent for the public prosecutor, after having been forced by the Court to withdraw three of the libels, before the panel was obliged to plead to the fourth, to have on the same day executed these other three libels, and forced the panel to go on and plead to them? This would have been considered so great an evasion of the justice done by the Court just before, that it would not have been endured. No public prosecutor could have set his face to that. Yet, where is the difference between that proceeding and the proceeding in the present instance? The first libel here is in dependence, and a new one has been executed upon the same grounds, though not in the same form. The prosecutor executes a new indictment before the old one has been disposed of. Is there any difference between this case and the case of colonel *Charteris*, as it would have existed, if the public prosecutor, after abandoning three indictments, had proceeded in the manner which I have just supposed?

Your lordships have been told, that there is no intention to do any injustice to my client. I do not say there is. I say they have gone wrong in point of form—in point of power—they have no right to proceed as they are doing. Though the public prosecutor now may not be disposed to do injustice, his successor may; and we might as well set afloat the whole forms of the Court at once, upon

saying that the public prosecutor intends no injustice.

It was said, that the counsel for the panel had notice that a new indictment was to be executed, and that the former indictment was to be abandoned. I am one of the panel's counsel, and I did not get notice of this. But what signifies the notice? It is binding on nobody—it is not binding on the prosecutor, or on the panel. Such a thing could not be done without the Court. It was very well in my lord advocate to have such polite intentions toward the panel; but it is not for his lordship to determine this matter. It is the Court, which are to do or not do what he wishes, according to their opinion of the merits of the case.

This kind of specialty pleaded by the prosecutor signifies nothing. Down to the present hour, my client and his counsel have been forced to the consideration of both indictments; and no little consideration has been given to both—and that is the hardship which it is the object of the law to prevent. Upon the whole, therefore, I hope that I am not obliged to answer this indictment before the first shall be disposed of—and then I am entitled to the benefit of full *inducie*, after the first libel shall be abandoned. I am not bound to answer to this indictment without any warning. If the prosecutor had no right to execute that indictment, it must be considered as not executed at all. Fifteen days, at all events, must be allowed after the first indictment shall be legally abandoned.

Mr. Jeffrey.—There are only two points—

Lord Advocate.—I object to more than two counsel for the panel in reply.

Lord Hermand.—As many of the panel's counsel as please may speak.

Lord Advocate.—As many of them as wished might have spoken before the Crown was called upon to answer; but they cannot now all be allowed to speak. It is also irregular for a junior counsel to speak after a senior counsel.

Mr. Jeffrey.—What have you to do with that?

Lord Hermand.—In justice to myself, I must here offer an explanation. One of the oldest cases I remember is the trial of Provost Montgomerie in 1759. Half a dozen counsel there spoke *seriatim*. I have myself been in cases in which this was done, having spoken in the middle of four or five counsel; but it was at the beginning, in answer to a plea to the relevancy, and not in reply.

Lord Justice Clerk.—I am of opinion with lord Hermand. Here the whole eight counsel for the panel might have spoken in succession immediately after Mr. Cranston; but I know no instance of two replies having been admitted for a panel.

My lords, you have heard this argument

maintained very ably, and you will now say what are your opinions on the subject.

Lord Hermand.—In every case I should be desirous of getting any information to enable me to sustain objections in favour of a prisoner. But my opinion is, that the objection in the present case must be repelled, because the prisoner has no interest to plead the objection.

At the same time, I am disposed to do all justice to the argument of Mr. Cranstoun. He stated, that the panel had pleaded not guilty to the former indictment—that Informations had been ordered upon objections which were stated to the relevancy—that a new indictment had been served while the former indictment had not been deserted—and that the former indictment cannot be deserted without the authority of the Court. He stated, that fifteen days further of inducements might be of material advantage to the panel; and he figured strong cases of hardship which the Court would have to check; for instance, there might be a series of indictments, upon some one of which the king's advocate might take it into his head to transfer suddenly the trial to Inverness or Aberdeen. I hope no such thing will ever happen; but should it happen, the Court has power to redress the grievance.

In considering the objection which has been brought forward, I wish to know what interest the panel has to plead it. I could figure a case where the panel might have a strong interest to plead such an objection; and then I might think differently from what I do on the present occasion.

The case would have been altogether different, if a different crime had been charged in the second indictment from what was charged in the first, or if the crime had been differently stated, or if something had been added by the public prosecutor. But here the indictments are the same. Something is left out in the second, which appeared to me objectionable in the first—the narrative, that the panel having “at Glasgow,” &c. “wickedly, maliciously, and traitorously conspired and agreed with other evil disposed persons, to break and disturb the public peace, to change, subvert, and overthrow the government, and to excite, move, and raise insurrection and rebellion, and especially to hold and attend secret meetings, for the purpose of obtaining annual parliaments and universal suffrage by unlawful means, did,” &c. But are the panel's counsel much the worse in their cogitations on the second trial, from this passage being struck out of the indictment? There is no increase in the second indictment; and, with the diminution which I have now mentioned, the two indictments are in the same terms. The panel, therefore, has no interest to plead the objection upon which he appears to rely.

It is true that the prosecutor, in law, or in point of form, cannot, of himself, desert the

diet. But did the judges ever take it into their minds to ask the prosecutor, upon any occasion, why he desires the diet to be deserted? We presume he has good reasons for doing so, and we never ask him to state those reasons. The power of passing from or deserting an indictment, is substantially in his majesty's advocate or his deputies.

I think the counsel for the panel would have done better to have withheld their objection. Has this panel pleaded to the present indictment? I believe not; for his counsel prevented him. The first indictment had not gone to a jury, and never will. Before an indictment go to a jury, it has been by practice in the power of the prosecutor at any time to pass from it by bringing a second indictment; and it were unwise to put a rash hand to any variation in the procedure in criminal trials. Many instances might be cited of a first indictment having been virtually passed from by a second serving, and many cases to that effect were cited by one of the learned gentlemen, without going further back than 1812. These cases are familiar to us all. I was present at several of the trials. The lord advocate went further back, and he stated the case of Mendham. I take the true view of the law to be this—that the serving of a new indictment is a substantial dereliction of a former indictment. An application to the Court on the subject is a mere matter of form. No good can arise from sustaining the objection in this case; and I do not think that in law and practice it can be sustained.

Lord Gillies.—I am not sure that I can arrive at the same conclusion with my brother who has now spoken.

I think it fair to state in the outset, that actual hardship is a plea which cannot be stated in the present instance. I do not think that the panel can complain of hardship; and no such plea, I believe, is seriously insisted on, as that of actual hardship. The argument of the prisoner's counsel is an objection in point of form, founded upon principle, and all forms which regulate criminal procedure are of importance.

The case of Charteris was the first referred to; and what do I gather from that case? There were four indictments; and the prisoner was brought to the bar under the charge contained in all these four indictments, having pleaded at that time to none of them. His counsel excepted to this, and I think with reason; and, in consequence of what passed, the prosecutor was obliged to abandon three of the indictments, and the trial proceeded upon the fourth. I understood Mr. Clerk to say, that the trial did not proceed *instantly*; in which I think he is mistaken. I think that all that was done in that case was to find the prosecutor could not proceed on any one indictment without expressly abandoning the rest; and I understand the trial proceeded immediately. This judgment, whether right

or wrong in the case of Charteris, and though much founded on, seems to have been departed from in the subsequent practice of the Court. It seems to have become an established practice, reconcileable with principle, that a public prosecutor may raise indictments against a prisoner in succession for any period, and may bring him, when he chooses, to trial, and that the prisoner has now no ground for objection as in the case of Charteris. I hold so, for this reason, that it is now an established principle, that in criminal prosecutions, a public prosecutor, by raising a fresh indictment against a prisoner, *eo ipso* passes from all former indictments. Suppose, therefore, that the unfortunate man at the bar had not pleaded to the old indictment, I should have considered the new indictment a virtual abandonment of the former one. I conceive that the practice which has followed the case of Charteris, is reconcileable to principle, and for this reason, that till a prisoner pleads to an indictment, the public prosecutor has the disposal of the indictment, and he may bring it or not before the Court—he may abandon it virtually, or expressly, without the consent of the Court.

That is what the practice goes to. But what is the case here? The difference between this and colonel Charteris's case is, that here the prisoner did plead to the indictment. And what was the consequence of his doing so?—that the indictment was no longer within the power of the public prosecutor—he no longer could desert the diet—that is all within the exclusive power of the Court. If I am asked whether, when *litiscontestation* has taken place, and the pleading of the prisoner to the indictment may fairly be considered as an act of *litiscontestation*, the public prosecutor is entitled, of his own authority, to desert the diet or abandon the charge? I answer in the negative. He cannot do it without the interposition of the authority of this Court.

That question is decisive to a certain degree on the present point. If he cannot abandon it expressly, he cannot do it virtually—he cannot do it by implication—he cannot do it without the authority of the Court. It is laid down by Mr. Hume,—and I conceive it to be a most important principle in our proceedings,—that after a panel has pleaded to an indictment, the authority of the Court must be had for the abandonment of that indictment. I do not talk of this as a case of hardship; but I conceive hardships might arise from the exercise, by a public prosecutor, of such a right as his majesty's advocate now contends for.

The public prosecutor has many privileges. Many are justly, and reasonably, and wisely, and for the most proper purposes, given to him, which are not allowed to a private prosecutor. But *litiscontestation* goes through all cases. After it, neither party can go out of Court without the authority of the Court. Hume illustrates the rights, the situation, and predicament of the public prosecutor, by re-

ferred to the situation of the private prosecutor in similar cases. I can easily conceive cases to exist, though I have no apprehensions of their existing, in which it might be the duty of your lordships, in point of justice and law, and on important considerations of every description, to say that you would not allow the public prosecutor to abandon an indictment and take up a new one.

I apply this principle to the present case. The panel has pleaded not guilty to the first indictment, and a new one has been raised. I do not say the new one is null—I am not prepared to go that length. But this much I say, that this does not extinguish the old one—that it is not a virtual discharge of it, because the public prosecutor cannot expressly discharge or desert the first of himself. I conceive that the first still subsists—it has not been discharged by any authority competent to discharge it. It still subsists; and here the prisoner has a fresh indictment served against him. What is to be done with the present indictment? It is not null—but what the prisoner says is, I must have full *inducias* granted me; and the whole question is, whether the full *inducias* shall be granted him, Yes or No?

I think that, in point of form, you are bound to dispose of the first indictment, and then the question is, whether you will allow the panel the fifteen days, Yes or No?

It was said that the prisoner has no interest to plead the objection. I cannot go into that. This is a question of life and death, and he is the best judge of his own interest. I am not entitled to tell him that he has no interest not to be tried to-day. For any thing I know, he has a great interest—a material interest, by which his life may be preserved or prolonged. To have his life prolonged even for fifteen or sixteen days, is perhaps a serious object to him, as affording him possibly a better chance to save it from the present danger.

If the practice founded on by the Crown counsel were of long standing, inveterate, and reconcileable to principle, I should hold it sufficient to authorize the proceeding which is objected to in this case. But as to the practice cited here, where an indictment has been pleaded to by the prisoner, I have seen no cases stated prior to 1812. The case of Somerville in 1812, and that of Horn in 1814, were mentioned. The case of Mendham I have no distinct recollection of. I take it for granted it was correctly stated. These three cases are all we have been told of, which truly apply to the present case. I cannot pay such regard to these cases, as to be of opinion that they entitle me to overrule the objection; *First*, Because they are too recent in date, and too few in number, for regulating our decision: *Secondly*, I think they ought not to be attended to, for this reason, because I do not see that the objection was stated; and we all know how apt the best men are to fall into errors and slight irregularities when not put on their

guard by the bar. We were told, that it is the duty of the Court to watch over the proceedings, and see that they are regular and consonant to established forms, whether any thing be stated from the bar or not. In that observation I agree; and I am sure that I speak the sentiments of the Court when I say, that we are sensible of the anxious and able care displayed by your lordship on all occasions of that kind. But it is impossible for any man to attend to every thing. I say, therefore, I pay much the less regard to these cases, because they were not argued by the bar. They are cases in which the objection was not urged. If the objection had been stated the Court would have given greater consideration to the point. I have a third reason, viz. that I cannot reconcile these decisions to strict principle. I think that after a panel has pleaded to an indictment, the public prosecutor cannot pass from that indictment without the authority of the Court; and that he cannot virtually abandon a first indictment after such pleading, merely by serving a second indictment upon the prisoner.

I therefore think this objection is well founded, to the effect that it is our duty to insist that the lord advocate shall proceed on the former indictment, or shall now move the Court to desert it. Whether any consequences may follow from delay, I am not aware. The panel asks fifteen days longer; and, if he is right in point of form, I cannot refuse his demand, on the ground that he has no interest in what he asks.

Lord Pitmilley.—This is a point attended with some difficulty; and it would be singular indeed, if, after attending to the learned pleadings at the bar, and what we have heard from the bench, I could say I felt it unattended with difficulty. My impression however is, that the objection is not well founded. In questions of this description, the practice is the safest guide to go by. It here appears strong. I do not speak particularly of the case of Mendham; but the cases of Somerville and Horn are distinctly in point—are identical to the point before us.

It is true that these are late cases, and that no others have been mentioned. But let it be remembered, that this objection comes upon us unprepared. Neither your lordships nor counsel have had time to look to precedents; and I think it would be right to have a search made into former cases, to see whether these are the only cases which are the same with the present.

It is certainly true that these cases were not argued before your lordships; but the Court is bound to attend, and always does attend to the relevancy of proceedings of this kind, and particularly when it is important to the defence of a panel at the bar. The Court will in all such cases attend to the regularity of procedure; and in the case of Somerville this point was stated to the Court—it was not argued, but it was not overlooked.

I do not see that any hardship could arise from holding that the serving of a new indictment is a virtual abandonment of the old. It was upon that principle that the case of Somerville was decided; and if I did not understand that to be the principle in the case of Somerville, I should be of a different opinion as to the present case. I see no hardship to the panel, nor any want of principle in the rule. It is upon these grounds, though with difficulty and hesitation, that I think the objection cannot be sustained. At the same time, it may appear to be of importance, and I have no objection to have the point more fully considered, and a search made for precedents, because I am satisfied that when the matter is investigated, it will be found that the Court has proceeded upon these grounds in other cases.

Lord Reston.—The first inquiry is, whether this question has been settled or not by prior practice? If it is not so settled, I agree in the opinion which Lord Gillies expressed.

If I understand the quotations that were read from Mr. Hume, it is not in the power of the public prosecutor, without the authority of the Court, to pass from an indictment to which a panel has pleaded; and the panel may insist that the case should now go on upon the first indictment. The panel should not be exposed to the hardship of not knowing upon which indictment his trial is to proceed. It is in the power of the Court to pass from the first indictment or not, upon the motion of the lord advocate; and the panel should not be uncertain, upon coming into Court, upon which of the two indictments he is to be tried. It would be a hardship to put him in that situation.

It was said that the indictments are the same, or the one only a part of the other. That certainly does appear to be the case; but when they come to be minutely sifted, other circumstances may be discovered, of which the panel may avail himself.

I think he ought to have fifteen days *inducis* on the second indictment, after the authority of the Court is given to the abandonment of the first indictment.

As to the practice which has been cited, Lord Gillies stated very good reasons why we should not be bound by it. It is only of four years standing, and the objection was not stated in any of the cases which were cited. The practice cannot therefore be binding on the Court. I am for sustaining the objection, or allowing a search for precedents. The practice is perhaps of longer standing.

Lord Justice Clerk.—I certainly have no difficulty in stating to your lordships, that, notwithstanding the very able manner in which this argument has been urged on the part of the prisoner, and notwithstanding my deference for the opinions of my brothers on my left hand, I am not prepared to concur in the objection which has been brought forward in

this case; and if driven to the necessity of giving a decided opinion at present, I must differ from these learned lords, and find that the objection ought not to be sustained. Notwithstanding the weight of these opinions, you have the practice established in point of fact—for, from the deliberate averment of the Counsel for the Crown, you must assume that there is a series of cases in which you have acted on a principle directly opposite to that which is now contended for by the Counsel for the prisoner. I apprehend that it is also a weighty consideration in this question, that in one of the cases which has been cited, as to the procedure in cases like the present, the prisoner was visited by most exemplary punishment. I allude particularly to the case of Lindsay Crauford, who was sentenced to transportation for fourteen years. Somerville too was unfortunate indeed, if there was a valid objection which might have been stated against his trial, as the sentence upon him was imprisonment, accompanied with an exhibition on the pillory. These are precedents which have not been hitherto doubted by the Court; and yet our attention is now called to this question, and we are desired to sustain the objection of the panel's counsel. I hold it to be my sacred duty, sitting here as a Judge in a question, as to a form of procedure, before I put my rash hand to alter what has been the practice, to be convinced by argument, reason, and authority, beyond doubt, that that practice so uniformly adopted, and followed by such consequences, is contrary to law. If I did not so act, I should consider myself as in fact accessory to a fundamental subversion of our criminal procedure.

But although my opinion is different from that of my learned brothers, I am disposed to go into the proposition made by Lord Pitmilley of inquiring into the fact, Whether or not these recent cases are bottomed upon an older practice; which, if established, would go greatly to do away, or would much diminish the impression of the opposite opinions which have been delivered.

I think it no more than justice to the lord advocate to say of the statement of his lordship, that he had no other view than to bring before the Court the practice prior to that stated by Mr. Drummond. The case of Mendham occurred in 1804, not so recent as the practice alluded to in 1812. Mr. Burnet, where speaking of forgery, page 190, says, "The question again occurred in the trial of the same person (Mendham) in October 1804, for uttering and vending forged notes. The Court ordered informations on the point, but the prosecutor afterwards passed from the charge, and brought Mendham to trial on a different indictment in December following, for forging and uttering Bank of England notes, with an intent to defraud the Bank of England." Your lordships see, that Mr. Burnet, who was familiar with the forms of the Court, and was industrious to make himself acquainted

with every thing relating to the criminal law and procedure, states, in the very language which is objected to in this case, that the prosecutor afterwards passed from the charge. This is another case to be added to that train of precedents which have been cited.

This then being the case; there being evidence before you of a practice since 1804, and in one of the cases, the attention of the Court having been particularly directed to the point in question,—a circumstance which I now positively remember,—the question is, Whether the panel is now entitled to state to your lordships, that there is such a formidable objection to this practice, in point of principle, that you ought to lay it aside, and establish a new practice in this Court. That is the extent of the argument pressed upon you. Cases formerly were not so fully reported as they now are; but you are bound to hold, that in those in which the practice now objected to was followed, it had the consideration of the Court. If the practice had appeared to the Judges to be objectionable, they would have interfered, though no objections were stated by the panel's counsel.

I cannot agree with my learned brothers as to the possibility of hardship arising to a party from the practice which has been followed in this case. I do not think that the public prosecutor, in virtually passing from a first indictment by serving a second, leaves the panel in *dubio* upon which indictment he is to be tried. If it could be made out to my satisfaction that such was the case, I should indeed see something like hardship. But the moment it is held to be clear law, that even after the debate on the relevancy of an indictment, and after informations ordered on the subject of the objections stated, the public prosecutor, by serving a second indictment, passes from the first, no injury can possibly arise to a panel; he cannot be ignorant upon which of the indictments he is to be tried. The Counsel must know the law; and when consulted by him, they can inform him, that though five indictments have been served against him, it is only the last to which he has occasion to direct his attention. It is the duty of counsel for an accused, in reference to what I hold to be the clear rule of practice, to give the panel this information, and then no panel can be held in doubt as to the indictment upon which his trial is to proceed. It is upon a settled conviction that no prejudice can arise to a panel in such a situation that I think the objection is not well-founded.

Indictments, where there has been no pleading, are every day passed from, with or without any reason appearing on the face of the indictment. I say, the same principle applies to a case like the present. The cases are the same as to the safety of the prisoner. There cannot remain in his mind a shadow of doubt as to the indictment upon which his trial is to proceed; the rule of practice is a sufficient guide for him.

Upon these grounds, I say, I should be for repelling the objection; but I concur in the proposition which has been made to your lordships, that in a point of practice, which is of infinite consequence to the accused—the law of the country—and the guidance of futurity—and where it is stated that a recent practice only had crept in which was unknown in former cases, an inquiry should be made to ascertain clearly how the matter stands.

A small indulgence in point of time may be granted. The parties may be allowed to give in short Minutes of the state of the practice, to be delivered on or before Saturday next; and the case may be resumed this day se'ennight.

Lord Advocate.—There is another trial, that of Douglas,* fixed for Monday. I never have felt any desire to press a prisoner in point of time, if any object whatever was stated to me for his wishing delay. If the panel's counsel wish for time, I can have no objection to grant it them. On the present occasion, I only think it necessary that I should be permitted to state upon your lordships' record, what I now state *vis à voce*, that I did understand that by the service of the second indictment there was a virtual abandonment of the first.

I have no objection to this point being settled, even previous to Monday. The Minutes should be ordered to be given in immediately, that there may be no delay in bringing on the trial afterwards, as we may be told, perhaps, that no *inducie* had been running upon a second indictment. I do not wish to press the business; but a short day should be assigned for the inquiry proposed, which may be completed without delay.

Mr. Clerk.—It is impossible to search a record which has no index, in two days.

Lord Gillies.—There may be a debate upon the relevancy; and, by possibility, what the lord-advocate says may take place.

Lord Advocate.—I passed from the first indictment by executing the second, and the *inducie* on the second began to run from that time. I owe too much to the law and the decisions of your lordships, not to oppose the objection which has been brought forward to day.

Lord Justice Clerk.—There is to be no argument in the minutes. They are to be seen and interchanged.

Lord Advocate.—With regard to the terms of your interlocutor, a diet cannot be continued as to an indictment which has been passed from. I passed from the first indictment, and a majority of the Court agree that the first does not now subsist.

Lord Gillies.—The authority of the Court must be obtained to the passing from that indictment.

* *Vide Post.*

Lord Justice Clerk.—We keep every thing entire.

Lord Advocate.—The question for your consideration has not arisen under the first, but under the second indictment. Your lordships called the second indictment; you called the panel to plead to it; and in bar of his doing so, a motion was made that the trial should not take place upon that indictment; and the question is, whether the trial can proceed on it or not? Therefore you cannot proceed on any other, or continue any other than the second indictment. A majority of your lordships are of opinion that the first indictment was virtually passed from, and I called the diet of no other indictment than the second.

The following minutes of the debate were then entered upon the record.

Cranstoun, for the panel, objected,—That it was incompetent to serve one libel against a panel, while another, upon which he had already joined issue by pleading, was still current against him: That the first libel, having been pleaded to in face of the Court, was no longer *sub potestate* of the public prosecutor, and could not be deserted, or otherwise disposed of, but by judgment of the Court: That this libel, being still in force against the panel, was the only one against which he could now be called to defend himself; and that it was not till after it had been disposed of by sentence of their lordships, that there was room for the service of a second, against which the panel was entitled to have the full *inducie* of fifteen days to prepare for his defence.

Home Drummond, for his majesty's advocate, answered,—That the proceeding upon this occasion is sanctioned by the established practice of the Court; and that the very same course has been invariably followed in every case where the same circumstances have occurred. So, for example, in the case of Lindsay Cranford, indicted to stand trial on the 9th January 1812, when the diet being continued till 3rd February, new criminal letters were in the meantime raised, the diet whereof fell on the same day, and the trial proceeded: Thomas Somerville was indicted to stand trial on the 25th January 1813. He pleaded not guilty; and after a debate on the relevancy of the libel, informations were ordered to be lodged on the 15th February; but new criminal letters were raised, the diet whereof fell on the same day, and the trial proceeded. A question was asked in this case by one of the judges, if it would not be proper to desert the diet of the first libel? but it was answered, that a desertion might be argued to affect the second also; and that the former was held to be abandoned by the service of a

new one. The Court said they would adhere to the practice; and the case proceeded. In the cases of John Horn, June 13th and July 6th 1814, and of John Bell, who pleaded guilty on the first calling of the diet, January 9th and February 3rd and 10th, 1817, similar proceedings took place; as also in the previous case of Mendham in 1804.

2do, His majesty's advocate possesses an uncontrolled power over his *instance* in all stages of a criminal process. He is not bound, as a private prosecutor is, by statute, to insist at the appointed diet, but may at all times abandon or pass from any indictment he has raised, or any part thereof; and he does so in daily practice, according to his pleasure. And if he exercise this power at any time before an assize is set to try the case, he is still at liberty to insist of new against the panel in another indictment for the same offence.

3tio, The remedy for the possible abuses that may follow from this power, is to be found, not in attempting to compel the prosecutor to maintain an instance which he has dropped, over which the Court have no control, and for which the panel has no interest to insist, as he is out of Court by the abandonment of the charge but in opposing its oppressive renewal or continuation, when the Court may, on sufficient cause being shewn, desert the diet *simpliciter*.

4to, No objection is or can be made to the numberless examples of an instance dropped where the panel has never pleaded to the charge. Now this case is in nowise different in principle; for the parties can in no sense be said to have "joined issue" before an assize is set; no plea or statement of facts being final that is entered before the judges of the fact are named; nor can a panel have a *jus questionis* in his own plea. The doctrine of *joining issue* or *discontestation*, has no existence in this court, being founded in a presumed judicial contract between the parties; a thing inconsistent with the first principles of criminal law.

Lastly.—Service of a second libel has, in the recent practice of the Court, been held to imply the virtual abandonment of the first; and, consequently, there is no ground for the complaint of two indictments subsisting at once against the panel, and of his uncertainty to which he may be called upon to answer. Accordingly, his majesty's advocate declares, that he has abandoned the first libel; and he has no objection to authenticate this statement on the record in any form the Court may think fit; and this he apprehends is all the panel has any right to require.

As to the *inducis* of fifteen days, there is nothing in the act of parliament to prevent the service of a second libel during

the existence of a former one; and it is contrary to no principle, and sanctioned by the inveterate practice of the Court.

The Lord Justice clerk and Lords commissioners of Justiciary having considered the foregoing objection, with the answer thereto, and heard parties' procurators thereupon at great length, before answer, ordain parties' procurators to prepare and give in minutes, stating the practice relative to the said objection; to see and interchange these minutes; and to print and lodge the same in the hands of the clerk of court between and Saturday next, in order to be recorded. Continue the diet against the panel, and whole other diets of court, till Monday next, at ten o'clock forenoon, in this place: And ordain parties, witnesses, assizers, and all concerned, then to attend, each under the pains of law; and the panel in the meantime to be carried back to the Castle of Edinburgh.

(Signed) D. BOYLE, J. P. D.

MINUTES OF SEARCH OF THE BOOKS OF ADJOURNAL, From 1st January 1777.

ALEXANDER PENROSE CUMING, Esquire, against JOHN LAWSON. *Perjury*. 1785.

The diet was deserted *pro loco et tempore* on 1st February 1785, the panel not having pleaded. After the interlocutor deserting the diet, "Mr. Erskine then represented, that new criminal letters had been raised and executed, at the instance of Mr. Cuming of Altyre, against the said John Lawson, the diet whereof stood continued to this day." The Court continued the diet upon these last criminal letters to the 14th of February; on which day the panel pleaded not guilty, and informations were ordered. He was afterwards tried, and found not guilty.

JOHN BURNS and ALEXANDER BAILLIE VEITCH. *Assault*. 1789.

The diet was called on 21st December 1789, when Veitch was outlawed; and the diet continued against Burns to 18th January 1790, before he had pleaded to the charge. In the mean time, Veitch applied to the Court to be reponed against the sentence of fugitation.

On 26th December 1789, Burns and Veitch were served with a new indictment for trial on the said 18th of January. Upon that day the Court adjourned to the 25th; from which it was adjourned to the 26th, and from the 26th to the 1st February. The trial proceeded on 1st February, when the panels were tried and convicted.

BARRY, ROBERTSON, and CALLANDER.*
Sedition, 1793.

Upon 28th January, diet was called; Callander was outlawed; and the diet was continued against the other prisoners (who had not pleaded to the indictment), till 11th February, when the instance was allowed to fall.

On 18th February they were tried and convicted on an indictment which had been served previous to the said 11th of February.

ALEXANDER SCOTT.† *Sedition. 1794.*

Upon 20th January the diet was called and deserted *pro loco et tempore*; but, upon the 18th, a new indictment had been served against the prisoner, charging him to compare upon 3d February.

On 3d February the diet of the second indictment was called, and Scott was fugitated.

RICHARD MENDHAM. *Forgery. 1804.*

Richard Mendham was cited to compare on 10th October 1804, when he pleaded not guilty.

Informations ordered to be given in on or before 30th October: diet continued to 1st November; further continuation to 13th November, when whole diets of court continued to 14th; on which day, instance against Mendham dropt.

New indictment served on 3rd November, charging him to appear the 19th November. On that day, a continuation to 26th November; then continued to 29th, and from that to 3rd December; long pleading on the relevancy; and, after debate, his majesty's advocate passed from the libel, so far as laid on the common law; and diet continued till next day.

4th December, continued till 7th December; continued till next day. 8th, further continued till 10th; on which day, interlocutor on relevancy; not relevant; dismissed from the bar.

ALEXANDER CAMPBELL. *Theft and Robbery. 1809.*

After pleading not guilty, the lord advocate represented, that, for the present, he passed from the third charge in the indictment, viz. the theft committed at the inn at Dunfermline; but reserving to the public prosecutor to proceed against the panel on that charge in a new indictment, if he shall deem it proper so to do; and therefore restricts the indictment to the two charges of robbery.

JOHN LINDSAY CRAUFORD and JAMES BRADLEY. *Forgery of writings. January 8, 1812.*

Diet continued on motion of panels

* *Vide 2 How. Mod. St. Tr. 79.*

† *Vide 2 How. Mod. St. Tr. 283.*

till 3d February; did not plead; in the mean time, served with a new libel to stand trial on the 3rd of February. Trial proceeded accordingly.

NAPIER and GROTTO. *Murder and Robbery. March 31, 1812.*

After pleading to the indictment, the prosecutor passes from the charge of murder, and all the charges of robbery, except the robbery alleged to have been committed on Peter Bruce and J. Buchan Brodie.*

The Court find the indictment, as limited by the foregoing minute, relevant to infer the pains of law.

THOMAS SOMMERVILLE. *Perjury. January 25, 1813.*

Pleaded not guilty. Debate on relevancy; and informations ordered to be given in; and diet continued till 15th February. In the mean time, a new indictment served on the panel, calling him to stand trial on said 15th February. Trial proceeded accordingly; and Somerville convicted. Imprisoned, fined, and put on the pillory.

JOHN HORN. *Selling Forged Notes. June 13, 1813.*

Pleaded not guilty. Informations ordered, and diet continued till 12th July. In the mean time new libel raised, and served for trial on 6th July; when panel again pleaded not guilty, and the order for informations renewed; on advising which, libel was found relevant, on 15th July, when panel pleaded guilty, and was sentenced to transportation.

BELL and DOUGLAS. *Uttering Forged Notes. January 9, 1817.*

Diet against Douglas deserted *pro loco et tempore*. Bell pleaded guilty. The Court ordered informations on the relevancy of the indictment, and continued the diet against the panel John Bell, till 3rd February. In the mean time, a new libel served for 10th February, when trial proceeded, and Bell pleaded guilty again, and had sentence of transportation, the libel being restricted.†

* Many cases of abandoning or passing from a part of the charge might be produced; but it must be admitted to be a common practice, as, for example, in cases of child-murder, where the charge at common law is frequently passed from, upon confession of the statutory offence.

H. H. D.

† *Note.*—There are in this period various examples of diets deserted, on the motion of the prosecutor, *pro loco et tempore*, after pleading to the charge, and after interlocutor of relevancy, which it is thought unnecessary to produce, as the competency of that proceeding is settled law.

H. H. D.

ADDITIONAL MINUTES OF CERTAIN CASES BEYOND THE PERIOD OF SEARCH.

ISOBEL NICOLSON. Fire Raising.
June 25, 1711.

Indicted and accused, &c.

The Lord Justice Clerk and commissioners of justiciary, at desire and with consent of her majesty's advocate, desert the diet of the first indictment raised at the instance of her majesty's advocate against the said Isobel Nicolson, panel; but prejudice to him to insist in his other indictment already raised and execute against the panel, as accords.

PATRICK HAMILTON of Green. Murder.
July 30, 1714.

Mr. Duncan Forbes, his majesty's advocate, consents to the deserting of the diet against Patrick Hamilton, younger, of Green, upon this libel, without prejudice to him to insist in the new indictment raised at the instance of his majesty's advocate against him. (*Sic Sub.*)
DUN. FORBES.

The Lord Justice Clerk and commissioners of justiciary, in respect of the above consent, desert the diet against the above Patrick Hamilton, younger, of Green, upon this indictment, without prejudice to the pursuer to insist upon the new indictment, as accords.

(Signed) AD. COCKBURN, J. P. D.

This after informations given in and recorded, and several adjournments of the diets.

ANDREW FERNIE, and Others. Indicted for Sedition. Debate; and Informations ordered. May 24, 1720.

July 28.—Mr. Walter Stewart, his majesty's solicitor and advocate-depute, for his highness' interest, judicially consents to the deserting of the diet against the within named and designed Andrew Fernie, &c. without prejudice to his majesty's advocate of insisting against such against whom new libels are raised, as accords.

The Lord Justice Clerk and commissioners of justiciary, in respect of the above consent, desert the diet against the said Andrew Fernie and others, above-named, without prejudice to his majesty's advocate of insisting against such of them against whom new libels are raised, as accords.

(Signed) AD. COCKBURN, J. P. D.

The second libel being called,

Intra Andrew Fernie, &c. Indicted and accused, &c. Debate; and informations ordered. The informations afterwards given in, found relevant, and trial proceeds.

JAMES INGLIS, Indweller in Leith. Indicted and accused as guilty of Theft, Robbery, and Prison-breaking, &c. August 24, 1720.

Diet continued till 26th September, and afterwards to 17th October. On which day,

Intra James Inglis. Indicted and accused, *ut in die precedenti.*

Mr. Robert Dundas, his majesty's advocate, for his highness' interest, judicially consents to the deserting of the diet of the within indictment against James Inglis, panel, without prejudice of insisting in the new indictment, as accords.

(Signed) RO. DUNDAS.

The lords commissioners of justiciary, in respect of the above consent, desert the diet upon this libel against the said James Inglis, without prejudice of insisting on the new libel, as accords.

Intra James Inglis, panel.

Indicted and accused on the new indictment. Informations ordered.

MONCRIEFF stated, That in compliance with the order of the Court, a search had been made in the Books of Adjournal for precedents applicable to the question now before the Court. That a search from the year 1777 downwards, had first been made, and the result had been communicated to the panel's counsel some days ago; but that after this a farther search had, it seems, been made, which appears to go back to the beginning of the last century: and the statement of the cases so found was only communicated late on this day. (May 23.)

That on the part of the panel it may now be assumed, that the Court has before it every one example which his majesty's advocate has been able to discover, in the course of more than a century, of any proceeding which he thinks calculated to support the measure which has been adopted in this case, or to meet the objection founded on the clearest principles of law.

That on the result of this search the following remarks are humbly submitted:—

1st, That there is not one example in the whole practice of the Court, in which the same objection which is here insisted on was stated to the Court, and repelled by a judgment.

2d, That the lord advocate has printed the statement with regard to those cases on which it is presumed he means to rely; and that, as far as the panel's counsel can discover, the only cases in the long period which have the smallest tendency to shew any practice in favour of the prosecutor,

or which even require notice as having such a tendency, are two cases in 1714 and 1720, one case in 1804, two in 1813, and one in 1817. Between the year 1720, and the year 1804, the prosecutor has not been able to find *one* single case in the record, in which, after a panel had pleaded to an indictment, a libel was served and sustained without a *previous* desertion of the diet on the first indictment.

3rd, That to shew this, he should shortly take notice of each of the cases printed by his majesty's advocate.

On the first search, the following statement is submitted:—

John Lawson, 1785.—In this case the panel had not pleaded.

Burns and Veitch, 1789.—Panels had not pleaded.

Berry, Robertson, and Callander,* 1793.—Panels had not pleaded.

Alexander Scott.† 1794.—Panel had not pleaded.

Richard Mendham, 1804.—In this case the panel had pleaded not guilty. Informations were ordered; and several continuations of the diet took place, the last to the 14th November. On that day, it is said, the instance was dropped: And in the mean time a new indictment had been raised on the 3rd November. This, therefore, is *one* case, in which, after a party had pleaded, a new indictment was served before the diet on the other had been deserted by the authority of the Court, and without any such desertion. But the Court will be pleased to observe, that in that case the panel clearly had no interest to make the objection, but quite the reverse. For the second indictment was equally irrelevant with the first; and accordingly the Court, after full debate, ordered informations; and after various adjournments, the libel was found not relevant, and the panel was dismissed from the bar. Most clearly, therefore, it was not his interest to make any objection to the service of the second indictment.

Alexander Campbell, 1809.—This is not a case applicable to the point at all. There was no question about any new indictment; and the circumstance of the public prosecutor passing from particular charges in an indictment, intending or reserving the power afterwards to raise a new indictment, is wholly immaterial to the question. But at any rate, it is humbly apprehended, that even this takes place only with the consent of the Court, which is expressed by the terms of the interlocutor of relevancy.

Lindsay, Crawford and Bradley, 1812.—This is one of the cases which was quoted in the debate. But the panels had not

pleaded; and therefore it is altogether inapplicable.

Napier and Grotto, 1812.—This case is of the same nature with that of Alexander Campbell. There was no second indictment, and no question about a second indictment.

Thomas Somerville, 1813.—This case is so far applicable, that the panel had pleaded to the first indictment; that the second indictment was served without any previous desertion of the first; and that the panel was tried and convicted. But even with regard to this case, it is to be observed, that the crime of which the panel was accused was that of perjury, the punishment of which could not exceed imprisonment and pillory; and that the panel was at a very serious expence in defending himself at every diet of the Court. It was therefore obviously better for him that the trial should go on, whatever might be the event, than that it should be merely put off for fifteen days. Accordingly, the objection was not stated by his counsel, and could not be judged of by the Court.

John Horn, 1813.—This person was indicted for uttering and selling forged notes; the first of which is a capital offence. He pleaded not guilty, and informations were ordered. Then a new indictment was served without any desertion; and a pleading on the relevancy again took place. But the Court will observe what followed. When the new indictment was found relevant, "Panel pleaded guilty" to the second charge, and was sentenced to transportation. In such a case, though the panel had an interest to object to the relevancy of the charge itself in both indictments, it is evident that it would have been very much against his interest to object to the powers exercised by his majesty's advocate, or to the regularity of his proceedings.

Bell and Douglas, 1817.—Nothing can be drawn from this case. Bell pleaded guilty to both indictments; and as to Douglas, the diet was deserted. It is submitted, that it has no analogy to the present question.

These are all the cases selected by his majesty's advocate, from the first note of search, from 1777 downwards. And it is obvious, that none of them have any analogy to the case, except those of *Mendham*, *Somerville*, and *Horn*; and, even as to these, the explanations appearing on the face of them are quite sufficient to account for the objection not being stated; which, after all, is the utmost that can be drawn out of them.

The additional notes mention four cases.

Isabel Nicolson, 1711.—Panel in this case had not pleaded.

* 2 How. Mod. St. Tr. 79.

† 2 How. Mod. St. Tr. 302.

Patrick Hamilton, 1714.—The fact is not distinctly stated, nor does it at all appear what became of the case. Though the minute and interlocutor speak of the "new indictment raised," this may, in truth, refer merely to the notice of the lord advocate of an intention to raise a new indictment immediately thereafter. Without seeing the dates, it is impossible to draw any correct inference. Besides, though it is mentioned in a note that informations had been given in, it does not follow that the panel *had pleaded*. The informations might be on the form of citation, or on other points not necessarily implying that there had been a plea to the indictment.

In one view, however, this case is, with many others, a fatal precedent against the doctrine maintained by his majesty's advocate. For it will be observed, that *Mr. Duncan Forbes* never thought of maintaining, that, after pleading, the service of a new indictment *ipso facto* put an end to the first, or that it could be abandoned otherwise than by an express interlocutor of the Court.

Andrew Fernie and others, 1720.—This case is nearly on a footing with the preceding. It does not appear when the new indictments were raised. But it does distinctly appear that his majesty's solicitor and advocate-depute of that time did not imagine, that he had any power to abandon the first indictment otherwise than by a motion to the Court; and an express interlocutor was accordingly pronounced.

James Inglis, 1720.—Panel had not pleaded.

This is an analysis of the whole cases founded on by his majesty's advocate. And the Court will now see, that there are none bearing even the appearance of analogy, except only, 1st, *Hamilton* in 1714; 2nd, *Ferne, &c.* in 1720, the circumstances of both of which are imperfectly known; 3rd, *Mendham* in 1804, in which both indictments were found irrelevant; 4th, *Somerville* in 1813; and, 5th, *Horn* in 1813, who at last pleaded guilty, and got the libel restricted to the charge which only subjected him to an arbitrary punishment.

That it would be for the Court to judge, whether there is any thing in these cases, picked out of the practice of more than a century, to overturn the established principle of law, which was explained in the debate, and is laid down by the first authority on the subject, that after a panel has pleaded, the lord advocate has no power to abandon the indictment, except by express motion to the Court; and that if he cannot do it expressly, still less can he do it virtually, or by implication.

4th, That, annexed hereto, there is the whole search of the records from the 1st
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January 1777, downwards; and that from that list, the Court will perceive a much stronger practice, by which the lord advocate finds it necessary to move the Court expressly to desert the diet, intimating at the same time, that he intends instantly to raise another indictment. And more particularly, there are many cases in which this is done after the panel had pleaded.

Cumming against *Leslie, 1785.*—Desertion after interlocutor of relevancy.

Walter Ross, 1786.—Had pleaded not guilty. Diet deserted *pro loco et tempore*.

Brown and M^r Nab, 1793.—Desertion after interlocutor of relevancy, expressly for the purpose of serving a new libel.

Charles Sinclair, 1794.—Diet deserted after relevancy found.

Gavin Simpson, 1811.—Diet deserted after interlocutor of relevancy.

These are cases in which the panel had pleaded. There are many others in which the record bears a desertion *pro loco et tempore*, for the purpose of immediately serving a new libel.

David Dalgleish, &c. 1780.

John Grant, 1783.

William Tenant, 1789.

Thomas Wilson, 1790.

Jacob Tait, 1795.

O'Neils, 1796.

Urquharts, 1797.

Kirby, 1799.

Richard Mendham, 1800.—"Diet deserted before pleading, as the advocate stated he meant to serve a new libel this afternoon."

Clark and Brown, 1802.

Monro and M^rFarlane, 1809.

That from this evidence of practice, to which may be added all the cases in the additional notes, it is humbly submitted, the inference is irresistible, that no such principle ever was recognized as that maintained by his majesty's advocate, that by executing a new indictment, a previous indictment to which the panel had pleaded is *ipso facto* extinguished. The law has acknowledged no such power in the lord advocate, and it is as little sanctioned by any practice. On the contrary, the uniform practice, with the exception of a few straggling instances, all since the year 1804, and all but one since the year 1812, is directly the reverse, the lord advocate having always thought it necessary expressly to move the Court to desert the diet.

That on the whole, it was humbly submitted, that this search into the practice, instead of supporting the plea of his majesty's advocate, founded on a mere allegation of practice, in opposition to

the principle of law, tends very strongly to support the plea of the panel, and to shew the incompetency of the proceeding here objected to: That if there were nothing more to be stated, it would be enough, that between the year 1720 and the year 1804, there is not one example of a second indictment raised after a panel had pleaded to the first, and before a desertion of the diet by authority of the Court. The case in 1804 has been explained; and it will be for the Court to judge, whether a practice, which really rests on one, or at the utmost two cases in 1813, can make law, in opposition to principles otherwise clearly established.

COURT OF JUSTICIARY.

MAY 26, 1817.

Present.

Rt. Hon. *David Boyle*, Lord Justice Clerk.
Lord Hermand.
Lord Gillies.
Lord Pitmilley.
Lord Reston.

Counsel for the Crown.

Rt. Hon. *Alexander Maconochie*, Lord Advocate [afterwards a lord of Session and Justiciary, with the title of Lord Meadowbank.]
James Wedderburn, Esq. Solicitor-General.
H. Home Drummond, Esq.

H. Warrender, W. S. Agent.

Counsel for William Edgar.

John Clerk, Esq.
Geo. Cranstoun, Esq.
Thos. Thomson, Esq.
James Moncrieff, Esq.
Francis Jeffrey, Esq.
J. P. Grant, Esq.
Henry Cockburn, Esq.
J. A. Murray, Esq.
G. W. Boyd, W. S. Agent.

William Edgar was placed at the bar.

Lord Justice Clerk.—Your lordships remember the objection that was stated in this case. You ordered minutes to be given in for the parties, stating the practice relative to the objection. These are now upon the table; and you are to say how they are to be disposed of.

[Here Mr. Cranstoun* was heard at considerable length in support of the objections to the competency of the indictment.]

Lord Gillies.—Before the prosecutor begins, I want an explanation of a point. The case of Hamilton has been mentioned, in which Duncan Forbes was prosecutor. That name must

excite in us all peculiar attention. On page 5, of the joint minute of the parties, it is stated by the public prosecutor, "Mr. Duncan Forbes, his majesty's advocate, consents to the deserting of the diet against Patrick Hamilton, younger, of Green, upon this libel" (I understand informations had been ordered, which raises a presumption that that libel had been pleaded to), "without prejudice to him to insist in the new indictment raised at the instance of his majesty's advocate against him." What I want to know is, whether this new indictment raised was served? In looking at the preceding case, "but prejudice to him to insist in his other indictment already raised and executed," the insertion of "*executed*," in one case, and the omission of it in the other, excites suspicion that it was not executed in the other. It is mentioned in the one, and not in the other.

Mr. Drummond.—My Lord Justice Clerk; It appears to me, that there are two points for consideration in this case. The first is one of considerable importance, the other is of no importance at all as affecting the panel. The first to which I allude, is, whether it be competent, during the dependence of one indictment to serve another. The consequence would be that, if this be incompetent, the service of the last indictment in the present case would be a nullity; and the panel would thus obtain a further delay, to allow time for serving it over again. The other point is, whether, after an indictment has been *pleaded* to (to use an expression which has been more dwelt upon in the present case than in all the former practice of the Court), it can be abandoned by the prosecutor, without an act of the Court, or whether it can only be got rid of with the authority of your lordships. This second point is of no importance on this occasion, and is, in truth, a mere question of form; for, whatever your finding should be, the result will be the same to the panel at the bar.

The first point, however, fortunately appears to be attended with no difficulty; for it is settled by constant and inveterate practice. I shall not detain the Court by repeating what is stated in the printed minutes, where your lordships have before you not merely the five cases to which only the learned gentleman has thought proper to allude, but a series of other cases of which nothing has been said. There are, besides, the cases from 1711 to 1720, in the additional part of the minutes, which are completely in point upon this part of the subject, proving that any given number of indictments may subsist against a panel at one and the same time. Even the case of colonel Charteris, of which so much has been said on the other side of the bar, may be referred to in support of this doctrine. As quoted by Mr. Hume, it establishes a complete precedent, that it is competent to raise at once, and consequently to execute, a number of libels against an individual accusing him either of the same, or of fifty different crimes.

* No report of this speech has been procured.

The only rule of law as to the defence of a panel, in such circumstances, to which our practice seems to pay any regard, and it is sufficient for every useful purpose, is this, that the prosecutor must make his choice, before going to trial, as to the indictment upon which he is to proceed against the panel. But, in the present, of all cases, I do not know to what useful purpose it can tend to enter into this discussion at all; for if, as happens here, there is one and the same crime charged, and the same particulars are mentioned, the defence also will be the same under the different libels.

Besides, it will always be remembered, that, by the view of the law which I maintain, the first indictment is already extinguished. For either the prosecutor does virtually abandon all previous indictments, by executing a subsequent one, or the Court will, as a matter of course, desert all diets but that in which he desires to appear. And here it is upon the record of the Court, that he has abandoned the first libel; and it remains for the learned gentleman to show by what proceeding it is possible to keep the prosecutor in Court longer than he chooses to remain. What I state is the settled practice in a multitude of cases, which are of that description that they cannot appear in the books of adjournal, or form any entry on the record. When a panel forces on his trial by means of the act 1701, and the prosecutor does not bring on the trial on the first indictment, but new criminal letters are raised against the panel, these letters must be served before the expiration of the first indictment, otherwise the panel could not be detained in prison. Now, in all the numerous cases of this description, it is plain that two libels are in existence against the panel at once, without the diet ever being called, or the panel even brought into the presence of the Court, and no objection has ever been made to such a proceeding.*

* I was not aware at this time, that on one occasion it had been thought worth while to state an objection to this form of proceeding. The circumstance is detailed in the following note to Mr. Burnet's work, page 367: "But is it necessary, in point of form, that the diet be called and *simpliciter* deserted, as the act ordains, in order to entitle the prosecutor to the benefit of new criminal letters? In practice it is not held so; and justly, for though not calling the diet be a virtual desertion of it by the prosecutor, the prisoner can sustain no prejudice by this form not being gone through, it being still competent to recommit him on new criminal letters being served. Accordingly in the case of Welsh, who had run his letters, and on that ground petitioned for liberation on the lapse of the first forty days, but who had by this time been served with new criminal letters, Lord Justice Clerk (Hope), on advising his petition, pronounced this interlocutor: '28th October 1808, having con-

In the case of colonel Charteris, quoted by the learned gentleman who preceded me, the discussion was not as to the running of the *inducie*, and the subsistence of several indictments at once, as he seemed to suppose, for that was taken for granted to be lawful; neither was it imagined, that on having proceeded to the trial of one indictment, all the others were not thereby extinguished. The question was, whether the panel should not be informed, before being called on for his defence, to which of several indictments he was to answer. There was no doubt as to the competency of raising and executing them all. No person ever entertained a doubt upon that subject. The demand made was, that before the trial the panel should be informed on which indictment the trial was to proceed; it not being admitted, or so well understood as now, that the last service extinguishes a previous libel. It is unnecessary to say more upon this first point; for it is settled by the established practice of the Court, that there may be fifty indictments subsisting at one time, if, before the panel be made to answer or take his trial, they be all reduced to one.

The next question is as to this doctrine of pleading to an indictment, about which the learned gentleman did not choose to speak by itself, but only in conjunction with the other point, and about which I should have been glad to have heard what he could say; for I have not yet obtained the remotest glimpse of what the idea of "joining issue," as applicable to the case before the Court can rest upon. The form of interrogating the panel, as to his guilt or innocence, before naming the jury, is one of the most immaterial, I might almost venture to say, useless steps of the whole process. In England, a panel confessing may be

considered the foregoing petition, with the letters of intimation and execution herewith produced, in respect that new criminal letters have been raised and executed against the petitioner, and have been laid before his lordship, along with the petition for his majesty's advocate, for a warrant to detain the petitioner in prison; refuses the desire of this petition, in so far as it prays to set the petitioner at liberty; reserving to the petitioner the benefit of any argument he may be advised to found on against being subjected to a new trial, in consequence of the diet not having been deserted *simpliciter* on the 27th current, as he alleges it ought to have been, under the act 1701.'

"Accordingly when the trial came on, on 21st November following, the prisoner founded *inter alia* upon the circumstance of the diet not having been deserted *simpliciter* when the diet of the former libel fell; but the Court held there was no necessity for an interlocutor to that effect, the non-appearance of the prosecutor being a virtual desertion of the diet, and entitling him to serve new criminal letters, in terms of the statute."—H. H. D

convicted and punished by the Court without the intervention of a jury; and, if he remain silent, he may, in certain cases, I believe, be presumed guilty; and, in others, till very lately might have been punished by a barbarous sort of death.* Now, in all this, our practice is essentially different. The Court are no more judges of the fact, in a case of confession, than where the proof rests upon any other species of evidence; and silence is, in all cases humanely interpreted into a plea of not guilty, the prosecutor being bound to prove his charge unless expressly admitted by the accused in presence of a sworn assize.

I have looked through our law books, and, from the beginning to the end of all the authorities of the law of Scotland, there is not a word of the doctrine of *litiscontestation* to be found in criminal proceedings. There is no such word used by sir George M'Kenzie, nor by Mr. Hume. There is nothing in practice, or in principle, to give it support, and the introduction of it is contrary to the first principles of our criminal law. Upon what does the doctrine of *litiscontestation* rest? Upon an implied bargain or presumed judicial contract between the litigants. But, is that a doctrine which can be introduced here? Can a man make a lawful paction concerning his life or his liberty? *Litiscontestation* has no sense or meaning in this place. I have not been able to find the word, even in a pleading, except in one case reported by M'Laurin; and I wish the doctrine for ever expelled from the deliberations of this Court.

No party has at present a *jus queritum* in any thing. To what could the panel here acquire a right? To his own plea? certainly not. Of what benefit could that be to him? If he plead guilty, it may to the prosecutor; if not guilty, is that of any use to himself? Is it to any act of the Court he has acquired a right? There is no act of Court in this instance. If there had been an interlocutor of relevancy, I should at least have understood the argument, but we have not yet advanced so far. This is the only ground on which I could conceive the argument of the panel to have any semblance of reason. But, unfortunately for the panel, in the case I have alluded to in M'Laurin's reports as being the only place in which mention is made of *litiscontestation*, there was an interlocutor of relevancy, and yet no regard was paid to the argument by the Court. The case is that of James Archibald, in February 1768. The petition in support of which the idea of *litiscontestation* among other arguments was there advanced, was, that the Court could not desert a diet, *pro loco et tempore* after an interlocutor of relevancy; but the Court deserted the diet in terms of the prosecutor's motion, and granted warrant for recommitting the panel.

I have to submit that the same consequence must follow to the panel, whether you are of

opinion that the libel is abandoned, or whether you go through the form of declaring it deserted. The Court cannot acquit the panel of the charge against him. Your lordships are not the judges of the fact. All you can do is to declare the diet deserted; and the consequence to the panel is the same, for he may be detained in prison and indicted again next day for the same offence. To constitute the Court judges in a previous question as to the propriety of the prosecutor's conduct in insisting in, or abandoning the libel, would be attended with the most extraordinary consequences, for which it cannot be supposed that the panel's counsel are prepared to argue. It would introduce a course of procedure hitherto unknown, which, if it had been introduced in other times, might have led to the superseding of the jury altogether, and which must in any times invest the Court with the office of the prosecutor.

It was said that the Court has a discretion to exercise in deserting the diet; that it may do it *simpliciter*, as well as *pro loco et tempore*, if good grounds be shown; and that the power of abandoning the indictment contended for takes this discretion from the Court. Mr. Burnet,* contrary to this statement, however, says that the prosecutor is not bound to show why he moves for the desertion of a diet *pro loco et tempore*, and that the Court must grant any motion which he makes to that effect. But I am quite willing to admit that Mr. Burnet has stated this doctrine somewhat too broadly, and that he has quoted in too unqualified a manner (as he not unfrequently does), the import of a decision to which he refers in the note in its support. I perfectly coincide with Mr. Hume's view of the subject, that though the prosecutor cannot be compelled to disclose his reasons for his motion to desert *pro loco et tempore*, the Court have a discretion which, if an extreme case be made out, they may exercise by deserting the diet *simpliciter*;† though a more difficult question remains behind, to discover what benefit the panel can possibly derive from that proceeding. All this, however, relates to the case of the prosecutor moving for a desertion *pro loco et tempore*, whereas here he has made no such motion.

I am not contending for a power inherent in the public prosecutor, without a remedy for any evil that may follow from it. All I say is, that the panel is already out of Court as far as the first libel is concerned, and that he has nothing more to ask for by desertion of the diet of that libel than what has happened by its abandonment by the public prosecutor. Where then, it may be asked, is the remedy in a case of oppression? The answer is, that by serving a multiplicity of libels and successively abandoning them all, the circumstances of oppression may be stated to the Court, if there be any to complain of, when, by insisting on a new indictment the panel shall at length be

* 1 Stark. Crim. Plead. 340.

* Page 310.

† Supplement, 237.

called upon to answer at the bar; or the panel may have his grievances previously discussed by presenting a petition. But it will always be remembered, that it is his own fault, by neglecting the remedies of the act 1701, if his imprisonment shall in the meantime be prolonged a single day. And it is not easy, therefore, to conceive a more harmless application that can be made to a prisoner than the service of a series of indictments, whether relevant or not, that are never insisted in, or to imagine how any evil or oppression can arise from such a proceeding.

In the present instance, and in the present stage of the business, there is clearly no case before the Court from which the panel has to ask relief, or of which he can complain, or on which he can be heard at all. The learned counsel for the panel are entitled to come forward and state their hardships, if any shall occur to their fertile fancy, and they will be in order in doing so, when the panel shall be brought again to the bar, and the prosecutor shall insist in a charge against him. It will then be for the Court to consider, whether a case is made out that calls upon them to desert the diet *simpliciter*, rather than *pro loco et tempore*; and, after all, if your lordships should have recourse to this unusual proceeding, I am yet to learn what benefits it would confer upon a prisoner more than the ordinary species of desertion *pro loco et tempore*, if obtained without the consent of the prosecutor. On a point on which Mr. Hume has spoken with so much caution and reserve, it does not become me to say any thing. For every evil there must be a remedy; and, for all injustice there must be redress in the common law powers of this supreme court; but the question is, whether the provisions of the act 1701 are not intended to meet every case that can occur, and whether a case can possibly occur, in which the Court would be justified in adding or attempting to add, to the safeguards of that law.

We have heard that Mr. Hume's authority is against us in this part of the case, and that is an authority to which we are all disposed to bow. But I must confess, that I have not been able to discover in any part of that learned author's work, such a meaning as has been imputed to him. I admit the justice of all the remarks that have been quoted. But your lordships will observe how Mr. Hume was quoted. There was nothing referred to as to his opinions of the prosecutor's power of passing from, or abandoning his own instance; but passages were quoted from different parts of the book as to the desertion of the diet. I must, however, beg your attention to those passages in Mr. Hume's work where he speaks of the prosecutor's power to abandon his instance; thus, he says, "at any period before remitting an indictment to an assize, the prosecutor may abandon a faulty libel, and raise another in a more correct and better form." I am aware

that this is not an authority directly in point, as the author is there only speaking incidentally on this subject, and we have seen how easy a matter it is to take detached passages without reference to the context and general bearing of the author's meaning, in order to support a particular purpose. Let us then see what Mr. Hume says when treating expressly of the prosecutor's instance. "As the Lord Advocate's instance is thus in one sense independent of the party injured; so it is also in this other sense, that it is entirely under his own management and disposal as to the seasons and occasions when, or the mode wherein, or the effect to which it shall be used. For in none of these points can any individual, nor even the supreme court, pretend to any controul or superintendence of him; as indeed," mark the conclusion, "as indeed to allow any such interference on their part, would in substance be to make the judges prosecutors, who ought to be kept free as far as possible of all previous impressions of the case."*

I submit, that if these passages be compared with those quoted on the other side, which last relate entirely to the desertion of the diet, and do not contain a word about the prosecutor's power over his instance, there will be no discrepancy or contrariety found between them. Desertion of the diet is an act of the Court; but as to the instance, the prosecutor has that entirely in his own hands. Your lordships cannot keep the prosecutor in Court a minute longer than he chooses; and the panel cannot prevent him from withdrawing, for he has all the benefit from that proceeding which he can derive from any desertion, and receives no harm from it.

As to the *inducie* of 15 days, if it be competent and proper to serve one indictment during the currency of a previous one, that question is at an end. The *inducie* of the second must run from the date of the service, else the power to serve the second would have no meaning whatever; and accordingly this will be found, on inquiry, to be agreeable to the practice. Your lordships will remember the origin and nature of the *inducie* of citation, for an extension of which the panel is not attempting to plead any equitable claim. The *inducie* are not founded upon statute but upon an equitable practice. No case is here made out in equity for a delay; and it certainly will not be said that there is any practice against the running of the second *inducie* before the desertion of the previous diets. If it be competent to serve three or four indictments at once, it must follow that the *inducie* of the whole may run at the same time. But at all times, before a trial is brought on, the Court will grant such delay as may appear proper in the circumstances of any particular case.

A complaint has been made that the panel has been embarrassed with different libels in preparing his defence. To this it is a sufficient

answer, that he may establish this fact of embarrassment, if he can, as the grounds of a motion for delay (which appears to be considered a great advantage to the panel, and is in fact the real object of this discussion) supposing him to succeed in persuading your lordships that the first libel is not abandoned. But I have already said that there is no room here for any statement of hardship; the second indictment being the same as the first, with the omission of two or three lines. This objection, if it existed at all, would apply with tenfold force to the common case of an alternative charge of two crimes in the same libel, or to the case of a panel served with several libels for as many different offences, when he would have ten times more difficulty in the preparation of his defence; and yet it could not be pleaded to be incompetent to make such a charge, or to serve different libels at once for different offences. This very year an instance occurred where the same individual, John Campbell, was tried on two separate libels on two consecutive days, and convicted on both.

Lord Justice Clerk.—I tried a man on two different libels upon the same day last circuit.

Mr. Drummond.—It was observed, that in the proceedings of the Court of Justiciary in points of form, many cases have occurred unworthy of being followed as precedents, and many examples of loose and irregular practice. My lord, I cannot allow this to pass uncontradicted. I have never had occasion to make such a remark myself, or to hear it made by others: On the contrary, I have always looked up to the practice of this Court, as a model of accuracy and correctness in points of form. If the learned gentleman go back to bad times, he may find some things not to be imitated, but not certainly in modern times when the practice of the Court has become more mature and perfect.

I cannot sit down without offering a few remarks upon the cases stated in the printed minute for the panel. It is said, in the second page, "That a search from the year 1777 downwards had first been made, and the result had been communicated to the panels some days ago: But that after this a search had it seems been made, which appears to go back to the beginning of the last century; and the statement of the cases so found was only communicated late on this day. That on the part of the panel it may now be assumed, that the Court has before it every one example which his majesty's advocate has been able to discover, in the course of more than a century, of any proceedings which he thinks calculated to support the measure which has been adopted in this case, or to meet the objection founded on the clearest principles of law." This is a very erroneous statement of what has been done in point of fact. Our search began in 1777, and prior to that there was no search at all. The cases stated before are not the

result of a search; and the panel's counsel are not entitled to say that no other cases can previously be found, for the only search made was since 1777.

Upon the case of Mendham, it is observed, that "in that case the panel had clearly no interest to make the objection, but quite the reverse." I do not think that the circumstance of a panel having no interest to state an objection is at all a sufficient reason to exclude a case from being quoted as a precedent, as seems to be assumed. It is the duty and the practice of the Court to look to the correctness of the proceedings at trials, whether objections be made or not: A strong example of which lately occurred in the case of Bell and Douglas, where, though the guilt charged was acknowledged, the indictment was not allowed by the Court to go to an assize. Similar examples of the discharge of this duty by the Court must be familiar to us all.

It is said, however, that in this case of Mendham, the panel had no interest to state the objection. But, we must not look to the result in judging of this interest, but to the circumstances in which he stood at the time for making the objection. How could he know at that time the result of the objection to the relevancy? and until the Court determined as to that, it was impossible that he could know whether it was his interest to make this objection.

If you turn the page, your lordships will find a complete shifting of the argument of interest, for, in the case of Somerville, it is there maintained that the panel had no interest to state the objection in question, although he was found guilty and convicted. He had an interest, it would appear, to state objections to the relevancy of the libel; for this was done by some of the learned gentlemen on the other side of the bar who defended him; and in consequence of the objections so stated, the indictment was abandoned, and a second indictment was brought. He had, however, no interest, according to the view of the case in the minute for the panel, to object to the trial and punishment, *because* the latter "could not exceed imprisonment and pillory." Those results are not in general so coolly anticipated; but where did the learned gentleman who wrote this minute find the law, that this is the utmost extent of the punishment of perjury? and how did he lose sight of the fact in that particular case, that the panel was over and above condemned to what was perhaps to him a still severer fate, to pay £150 of damages, and the whole expenses of process? As to the expense, he had only the ordinary allowance of two, or at most three, counsel. Here there are a great many more. I do not pretend to enter into the secrets of the other side of the bar, but appearances, at least, are against the panel on this ground. The trial again, it is said, could be merely put off for 16 days. Now, is not this all the panel asks for in the present case? and yet we are told

that was the reason the panel had no interest to plead the objection in the case of Somerville; and on that occasion it was said to be as well to be convicted now as 15 days hence though in this case the very idea of such a doctrine is reprobated as quite untenable and preposterous.

With regard to the case of Alexander Campbell, it is said, "This is not a case applicable to the point at all. There was no question about any new indictment, and the circumstance of the public prosecutor passing from particular charges in an indictment, intending or reserving the power afterwards to raise a new indictment, is wholly immaterial to the question." I conceive nothing can be more in point than this. What is law as to one charge in an indictment, must be law as to the whole. My statement, I observe, excites ridicule—but let it be answered. I repeat, that whatever proceeding is competent for the prosecutor as to one charge in an indictment, must be competent as to the whole charges; and that whatever he can do as to one of several charges, he can do as to one charge standing alone. It will be observed, too, that this proceeding took place in the case of Campbell after the panel had pleaded not guilty, though that certainly does not appear to me a matter of so much importance, as it cannot fail to appear to the learned gentlemen opposite from their views of this point of form.

It is not disputed that the prosecutor may afterwards bring another indictment on a charge so abandoned.

It is next said, with the customary inaccuracy, "But at any rate it is humbly apprehended, that even this takes place only with the consent of the Court, which is expressed by the terms of the interlocutor of relevancy." Now, there was no consent of the Court, and there neither was nor could be any mention of it in the interlocutor of relevancy. The interlocutor finds the relevancy of the libel as *restricted*. The Court did not desert any diet, and could do nothing but proceed to the consideration of what remained after the prosecutor had withdrawn one of the charges.

Then comes the case of John Horn, who is also said to have had no interest to make this objection. He had an interest, however, to object to the relevancy of both indictments: At least, a learned gentleman, Mr. Jeffrey, must have thought so, who was his counsel, and made the objection. Now I cannot see how he had an interest in the one and not in the other, delay being the object, and the only consequence, of stating either the objection to the service or the objection to the relevancy. In this case of Horn there were two charges, uttering and selling forged notes; both of which were ultimately found relevant. The panel did not know till after the interlocutor of relevancy that the prosecutor had any intention not to insist on the first, which was a capital charge.

The case of Bell and Douglas we are told, has no analogy to the present question, because "*Bell pleaded guilty to both indictments*; and as to Douglas, the diet was deserted." But that cannot remove the case as a precedent, for the panel certainly had an interest to state the objection if he had thought fit to do so; nay, he had a more than ordinary interest, having his confession of the first indictment standing on the record, whatever the prejudicial effect of that circumstance may be to a panel. The *induciae* of the two libels are proved in this case to have run at once.

With regard to the case of Hamilton, it is said that there may have been only *an intention* to raise a new indictment, notwithstanding mention is made of the "*new indictment raised*." That will not do. It is impossible to construe an indictment actually raised into an intention to raise an indictment. The remark, that the informations "*might have been on the form of citation, or on other points not necessarily implying that there had been a plea to the indictment*," is quite unfounded in fact. Before the Jurisdiction Act of George II.* informations were given in in every case, that being a form which could not be dispensed with. Those informations contained the statement of facts upon which the panel chose to rest his plea of not guilty, as well as the objections that occurred to him in point of law to the relevancy. In place of this cumbersome proceeding, which had become a grievance and an obstruction to the course of justice, that excellent law substituted the written defences, which, by a slovenly practice, are often neglected to be lodged, though they are in fact one of the most important steps of the whole process, and might, perhaps, supersede altogether the unmeaning and embarrassing ceremony of entering a plea before the Court, which may be immediately afterwards retracted when the Jury are sworn. The informations were in fact at that period not merely pleadings on the relevancy, but also defences, or explanations of the plea of not guilty; and it is, therefore, most erroneous to say, that though informations had been given in, it does not follow that "*the panel had pleaded*."

As to the case of Fernie, the minute stated, "that it does not appear when the new indictments were raised." But your lordships will see in the prosecutor's minute, page 6, that it was the very same date upon which both libels were called, consequently they must have been both previously raised, and must have subsisted together; and the *induciae* of the last must have run notwithstanding the existence of the first, which is all that is contended for. The word "*raised*" in this place plainly includes and implies "*executed*," for the diet of compareance could not have arrived unless this had been the case. That the lord advocate, therefore, has not power to proceed as he

* Stat. 20 G. 2, c. 43.

has done on this occasion, is a conclusion which cannot be drawn from this, any more than from the other cases that have been mentioned; and there is no authority whatever for the statement, that "it was not imagined at that time that he had any power to abandon an indictment otherwise than by motion to the Court."

The other cases in the minute for the panel are not in point; but they serve to shew the practice, that diets may be deserted *pro loco et tempore* even after interlocutors of relevancy.

Lord Advocate.—It is unnecessary, and it would be doing little justice to the argument, if I added one word to what has been stated.

Mr. Drummond.—I omitted to observe, that the case of M'Kenzie, which Mr. Cranstoun quoted from Mr. Hume, vol. iii. page 16. seems to have been quite misunderstood. It obviously relates to a perfectly different question from any thing now before the Court. There the prosecutor moved the Court to desert the diet in absence of the panel, contrary to the great leading principle, that no proceeding can take place in absence except fugitation; and the Court continued the diet (as fugitation was not moved for), till the panel should have an opportunity of showing why he did not attend.

Mr. Clerk.—I am sorry it has fallen to me to answer the other side, for Mr. Cranstoun had an opportunity of considering the case: I had not. I have but a general recollection of what passed last day. But I shall submit a few observations upon what has been stated by Mr. Home Drummond.

If your lordships think that the practice is of considerable importance on this point, I shall begin with offering some remarks upon the precedents which have been cited. Your lordships have heard quoted a great many instances in which the public prosecutor thought it incumbent on him to get quit of one indictment before he directed another to be served. You have a great number of instances of this practice by the most learned persons who have filled the situation of his majesty's advocate; and it seems to be the natural and necessary consequence of these opinions which your lordships have from Mr. Hume in several different passages of his work. I shall refer your lordships to that practice. It is one which has been discovered in consequence of a very anxious search into the records for more than a century. We have been told by Mr. Home Drummond that there has been no regular search into the records of Justiciary. I understood that these records had been very anxiously searched; and, whether so or not, I am entitled to assume that neither party can suppose there are any other instances in the records than those which have been laid before your lordships. These are sufficient, at least as specimens of the practice; and I must retain my private belief, that whether

he is or is not entitled to say there has not been that sort of examination which may be properly called a search, yet that there was such a search as to satisfy your lordships of the general nature of the precedents to be found in these records.

Assuming this, what is the result? Upon the one hand, you have a great many instances indeed of first indictments being abandoned—the diet being deserted—where the libel had been abandoned by the public prosecutor before the panel had pleaded—which we never disputed his title to do. We never hinted, that he has not as good a title to abandon as he has to raise and execute an indictment, if the panel has not been brought into Court, and parties have not joined issue. In a certain number of these instances, you have evidence of the opinions of the learned persons who conducted the business, that this is a proper and necessary mode of proceeding, because, by proceeding in that way, they put themselves to some more trouble than according to the mode now recommended by my learned friends. This is a practice as to which there could be no contradiction, for it is admitted, that, whatever is right or wrong in the present debate, the prosecutor may abandon the old, and raise a new indictment. This is a practice which can only show the opinion of the public prosecutors—most learned men—and also their opinion of the way in which the Court considered these matters. It is impossible you could have the judgment of the Court upon all of these points. What are the proofs? Except in one case, it is not pretended that the point was brought before the Court at all, so that there is no judgment upon it. And as to that case, all that was said was, that there was some conversation, but no record of it—a conversation between the learned gentleman and one of your lordships. And though I attended every diet as counsel for the panel, I certainly do not remember that conversation: and that is all that is brought forward as a precedent. It is a jest to say it is a precedent. It is incumbent upon you, and you perform the duty as well as you can, to attend to the regularity of your proceedings; but where the two parties are both keen, zealous, and anxious, all the zeal of the public prosecutor on the one side to obtain justice for the public—all the acuteness upon the other side to state every thing for the defence of the panel, in so far as useful to him, it is natural for you to take for granted that every thing is right, if nothing is mentioned as being wrong. Therefore, if an objection be not stated on either side, and do not appear from any inspection of the record, I submit to your lordships, that to state a practice of this kind as being of any authority whatever, is one of the most violent attacks upon a regular system of law that I have ever heard of, either in this Court or in any other. I was counsel for Somerville. I dare say I attended to his interest as well as I could. He was anxious enough, I dare say, to escape convic-

tion of the crime of which he was accused—the crime of perjury. But, notwithstanding my situation, I certainly did not consider it of that great eminence which the public prosecutor seems to think it was. I did not consider myself as acting as a great legislator upon the occasion. Nor did Mr. Somerville on the pillory think he was dispensing new law for the government of your lordships. What was done was done with consent of Somerville, and without objection.

Your lordships watch over the regularity of proceedings—but if the panel consent to any particular measure, and your lordships do not observe that it is irregular, can that affect the proceeding in law, and a most important principle in law? What I apply to the case of Somerville may be applied to every one of the cases. If they could have produced one precedent—one case in which the panel, considering it to be necessary for his defence, or of any use to him, had opposed a proceeding of this nature, and you had overruled the objection, I should have considered that precedent worth all the rest upon both sides of the question. No such precedent has been produced. And because perhaps a hundred panels have been brought to the bar, and a few of them have allowed this proceeding without objecting to it, possibly without having an interest to state an objection, and possibly without being aware objections might be stated, as junior counsel are often for the panels, they cannot be considered as precedents. It may be for the interest of a panel that his trial should not be delayed; and instead of putting off the time of the Court with the objection, and remaining longer in prison, a panel may often wish his trial to proceed, where, had his counsel offered the objection, and supported it before the Court by argument, the Court would have given it attention, and seen its propriety and force. But a panel, by delay, may also incur further expense, to which he will naturally be averse. This person, Mr. Somerville, was not one of those mendicant clients, of which there are numbers in the Castle at this moment. He was not in the situation of the panel at the bar, whose counsel, from a sense of public duty, are putting him to no expense whatever. I, for one, am proud of my situation, and every one of my learned friends entertains the same feeling. Somerville was put to a great deal of expense in the management of his case; and how could it have served him to delay his trial from day to day? It would not have availed him. There were Mr. Fullerton and myself, and perhaps another counsel at the bar at his expense. There is no doubt it was his wish to go to trial upon that day.

Lord Justice Clerk.—I see from my notes you did move the Court to allow the expenses of preparing for the defence of the panel.

Mr. Clerk.—I feel great obligation to your Lordship, and so must my client the panel,
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for your mentioning this circumstance. That shews there was great expense attending that trial, and as there was great expense, Mr. Somerville would naturally be averse to any unavailing delay, which must have been attended by additional expense.

As to the other cases, it has been remarked by the prosecutor, that we say it was for the interest of Somerville to go on with the trial, although a conviction followed; and then he gave us a most facetious contrast, indeed, between this case and another, in which it was not for the interest of the panel to state the objection, because the libel was not well founded, and the panel was acquitted. In this way, says my learned friend, whether convicted or acquitted, they find an interest not to state the objection. I apprehend, such shifts as this will never stand in your lordships' minds in place of solid argument; for, in the course of a century, I think it is strange a panel should not find it for his interest to wave such an objection as this. Delay is generally inconvenient, and an expense to him; he has the advantage of the list of witnesses to be brought against him being given in the indictment; and he does not know what other witnesses may be brought forward under a new indictment; and it is utterly impossible to account for the desires and wishes of men in such circumstances. One thing is certain, that, in the consideration and preparation in all cases past and to come, it has been and frequently will be the desire of the panel to go on without stating a dilatory objection. I apprehend, that in the present case you will not particularly inquire into the motives of the panel for stating the objection. He seems to be in a dangerous state—whether you will find against him or not, it is impossible to say; but he is in a dangerous situation, and I cannot be called upon to explain the particular motives for wishing for the delay; and, therefore, I submit to your lordships, without making more remarks upon the particular cases which have been adverted to on both sides, that these proofs which were pleaded on by the counsel for the Crown are not such as should have the least effect in regulating the law of the case, more particularly as the proofs are against the Crown.

But, the principle of the law is still more against them. Let us consider what is mentioned by Mr. Cranstoun, the proofs of single judges refusing bills of suspension. A panel was tried in an inferior Court, and subjected to an ignominious punishment, of which he wished to get quit altogether or have it mitigated. In numerous cases persons so accused presented bills to this Court, and they were refused by single judges, some of them the first judges that ever appeared in this country. Lord Braxfield was one of them, not to mention other names. Is it possible to conceive a case, where a man so convicted had not an interest to object to a single judge refusing his bill? It is impossible to dispute that the prac-

tice was against the right principle, and the interest was against the practice. Yet when the point came to be tried, you were of opinion, that the practice must yield to the principle of law, as it appeared to your lordships.

With regard to the principle of law, a few observations—It occurs to me, in the first place, that no attempt can be more desperate, or more completely unfounded, than the attempt made by the Crown counsel to convince you that the public prosecutor has power to abandon an indictment after a panel has pleaded. It is directly in the teeth of those authorities which we quoted to your lordships, coming from that great master of the law to whose *dicta* your lordships give great attention. And how is that opposed? They cannot pretend to say that we have misconstrued this authority, which is positive and express, and cannot be explained away. But they have recourse to other *dicta* of Mr. Hume as being inconsistent with this. Upon looking to these, I have to express my astonishment they could have been stated as inconsistent. The principal of them, page 305, first vol. of Trial for Crimes, and third vol. of the whole work, where Mr. Hume reasoning upon another point altogether, says, “But what shall be said when the fact which is related in the subsumption of the libel, though short of the crime charged in the major proposition, amounts, however, to a lower crime of the same class; as in the case of murder and culpable homicide; hamesucken and assault; theft and swindling; notour and simple adultery; and some others? In these circumstances, and on finding that his story does not support him in his charge of the higher denomination of crime, may the prosecutor nevertheless maintain his process, restricting his charge to the lower species, and limiting his conclusions as to punishment accordingly? This is an important question; and some diversity of opinion there has been among lawyers about it. Some have thought that there is a violation of that decorum and propriety so fit to be observed in all criminal proceedings, if any one shall be tried on a libel (the fundamental writ of the whole process) which *ex facie*, and taken as it is laid before the Court, is a disjointed, mis-shapen, and inconclusive composition; and that this consideration alone is a good reason why no such accusation ought to be sustained. But further, say they, to shew the prosecutor any indulgence in this article, is attended with a real hardship to the panel, who prepares for his defence against the libel as laid; and who knowing that he is secure on the ground which is taken there, will naturally be less diligent or solicitous in providing for his exculpation, in regard to any inferior degree of guilt. One, for instance, who is accused of parricide, and who knows that the person he killed was not his father; or who is accused of hamesucken, and knows that the assault was not made on the complainer at his home; may naturally conclude that this blunder is of itself sufficient to save his life; and will

put himself, therefore, to less trouble with respect to those other pleas of self-defence, gross provocation, and the like, which might serve to exculpate him, or to alleviate his guilt, if he were tried on an ordinary charge of beating, or of murder.” Then he says, “The prosecutor, too, cannot well say that he suffers any wrong in the enforcing of such a rule; since, for ordinary, he has the means of being accurately informed of the fact before raising his libel; and if he have any doubt of the proper style of the crime, he may lay his charge for it under all the several denominations which may eventually be found to suit the case. Nay, there is still no hardship, though he discover the weakness of his case after the execution only of his indictment, since at any period before remitting it to an assize he may abandon this faulty libel, and raise another in more correct and better form.” Does Mr. Hume or not correct his own errors, as they are supposed to be in the other passage he had written, as to the power of the prosecutor to abandon his libel? There is not the least hint of it. The passage quoted by my client is that which must be understood as limiting this general passage as to the power of the prosecutor. That he may abandon the libel there is no doubt, especially before the indictment is pleaded to; nay, after it, in a particular manner, there can be no doubt; for he has only to move the Court, who will do so, unless there be apparent injustice in doing so. Mr. Hume says, first, he may abandon, and, in the second place, that he has it not absolutely in his power—that it is inaccurate in point of style to say that he does it at all—for that it is the Court in cases whether public or private. The Court could keep him to the libel if proper; and either force him to desert *simpliciter*, to the effect of having no right to bring a new trial, or hold him to the libel already pleaded to. This is Mr. Hume’s fair meaning. So much has been said upon this, that I shall not trouble you with any more remarks upon the power of the prosecutor to desert his libel. I may assume, he has no power without the authority of the Court. He has just the same power as a man in other instances to do what is lawful, but only in sight of the Court. Therefore any notice from him that he was to do such a thing might be very good notice that he was to move the Court, but could be nothing further. He had power to give notice of that, and to do it; but still it was only a notice of intention, and it is not a measure till the Court interpose for the purpose. This is the sum and substance of what can be extracted from Mr. Hume on the subject, the authority to which you have been accustomed to refer in all cases.

As to Mr. Burnet, he either is wrong, or perhaps corrects himself in another passage; and he would have admitted himself that that passage was to be understood *sub modo*, and that the Court should consent.

Let us see where the rest of the argument lies. Assuming that the public prosecutor has

no power, without the act of the Court, to abandon the libel to which the panel has pleaded, it occurs to me that a most ready way to this question is to consider the case of Charteris; what was done in that case; and what is to be inferred from that case.

In the case of Charteris four indictments were raised; and my learned friends were pleased to assert (they are better acquainted with these ancient times than we), that it was at that time a practice to raise many indictments. Many of the practices of that period are better honoured in the breach than the observance, and many of them are so by the present Court. Notwithstanding this, it was said to be the practice in those times to raise a whole bunch of indictments at the same time. This was done in the case of colonel Charteris, who said he should not be obliged to answer to the whole. No, but answer to the one read in Court, and you may plead to this indictment. You were told the question was, whether the prosecutor could insist in four at the same time. I see no such question there. On the contrary, it is stated by Mr. Hume that some of these indictments were called for other diets. But, be this as it may, when Charteris was told he had only to plead to this indictment, what did that force the public prosecutor to do? Whether he was attempting to carry on four at the same time, or one, is of no consequence; for the Court forced the others to be abandoned. Why was the public prosecutor obliged to give up these indictments? upon what ground? Why was not he allowed to go on with one, suspending over the head of the panel all the others? Why did not he say, he wished this, and the Court allow it—the Court saying, “only answer one at a time, and no harm to suspend the others over your head: They are not called now, and may never be called: If you are acquitted, you cannot be tried again for the same offence: They are for the same offence, and therefore there is no harm in having these all against you.” The Court would not listen to this. The prosecutor was obliged to give up the indictments, and then Charteris pleaded. That is a fair state of the case. Now, why did the Court oblige the prosecutor to give up the indictments before the pleading? That is a home question; and no answer has been given to it. The answer is given by Mr. Hume, and a most satisfactory answer it is, and he repeats it again and again in different passages. The reason was—oppressing the panel in the management of his defence. The Court ought not to allow that, and why? Because contrary to the rules of justice, which are paramount to all other rules in this Court. We were told, that an act of parliament is of greater authority than a law of practice of the Court. I apprehend a judgment of the Court, proceeding upon rules of justice, is stronger than any other precedent. I am entitled to assume, that this was considered by the Court as the justice of any case in which

more than one libel would be hanging over a man's head while pleading. Mr. Cranstoun put a question, would it have been competent for the prosecutor, after abandoning these, to have served them over again, or new ones to the same effect? If any public prosecutor had dared to do such a thing, the Court would have taught him his duty. If any public prosecutor had been daring enough so to tamper, and attempt to evade the justice of the Court, in a manner which would have been so grossly shameful (I am not intending to apply any strong epithets to the proceeding before you: I think it is a mistake, and a natural one, on the part of my learned friends, to act as they have done): but in the case of Charteris, it would have been considered a gross contempt of the judgment of the Court. What has been done in the present case? It seems that a public prosecutor cannot serve four libels at once, to the effect of bringing a panel to trial upon one. Though he cannot do it, he can do another thing. He has no occasion to serve his libels for the same time; but immediately after the panel has pleaded to one, he may serve half a dozen for the same offence, before that libel which has been pleaded to has been disposed of by the Court. It is ludicrous to maintain this. It is contrary to all reason that could be applied to a thing of the kind. If there is any legal principle in the case of Charteris, this is impossible.

I apprehend the question lies here. If the prosecutor was not entitled to serve a new libel, then the new libel was not served, for there is one great law of justice as of equity. “*Id tantum possumus quod de jure possumus.*” If the public prosecutor had no right to serve that libel, then you will consider that the libel was not served, and that is my reason for insisting at your lordships' bar, that the panel cannot be obliged to plead to that libel. The former libel has not been deserted to this moment; you have not yet consented to it. I am not going to say any thing so insincere as that you will be called upon to refuse your consent, when proposed on the motion of the public prosecutor. But the public prosecutor has taken a high station here. He refuses to move your lordships to desert the diet; and therefore you have never had an opportunity of considering the point, whether it should be deserted or not. If the diet had been deserted this day, before we began to state this point to your lordships, there is another ground sufficient for us which would have arisen. I shall not plead any thing without an interest. I am entitled to tell them, the libel would in that case have been considered as served this day, that I may have time to prepare my defences. I shall not enlarge upon the hardship which might arise to the panel, from being obliged now to answer to this libel. It is sufficient for me, that the practice which has been followed here is contrary to the established practice before your lordships, and the best prosecutors have uniformly deserted libels

before serving second indictments. There may be hardship in this case, and there might be greater in others. As to the case which was stated by Mr. Cranstoun, of two libels depending at the same time, and one of them where the panel was to be tried in Edinburgh, and another at Aberdeen, that proceeding would be so harsh and unjust, that even leaving matters to the discretion of your lordships (which every sound rule of jurisprudence is against, for the Court should have no discretion as to such matters), you would interpose a remedy for the evil. But the rule of law is not more against such a proceeding than against the present. I should have no apprehension of the consequence in that case; for, till a total desertion of law and justice in the country, such a thing could not be admitted. But, is it no hardship to be perplexed with two libels at the same time? The question of relevancy is attended with the greatest nicety and difficulty, and has given counsel a great deal of trouble already—and is there no hardship in having to give as much consideration to a new libel? That former libel was attended with so much difficulty, and occupied so much of the attention of the panel's counsel, that there is no saying what pleas might have arisen to them under that libel, and prevented them from paying attention to the new libel. What if the counsel in the former case had not thought it incumbent on them to support the panel in the present? What if he had been deserted by his agents? I do not suppose there is any chance of that in this case; but this signifies nothing at all to a general rule, to which your lordships should adhere in all cases. There have been cases in which a man has been defended by counsel and agent in one indictment, who did not think it incumbent upon them to defend him in another. It was said, that the panel had notice a considerable time ago that the libel was to be abandoned. That was an accommodation. But what if the public prosecutor had given no such notice? It was not incumbent on him to give any notice. And as the panel would have been brought to this bar, with his counsel and agents ready to defend him in the former case, after bestowing great attention upon it, but not prepared to defend him in this case; is not that a situation which your lordships would take into consideration, if any thing depends upon the possible hardship? The counsel and agents might have been brought to your lordships' bar, under the impression that the trial was to go on on the first indictment. When they come, ready to defend him, they are told that that case is not to be tried. The prosecutor prays the Court to desert the diet *pro loco et tempore*, and then proceeds upon a new indictment, of which the counsel and agents had no notice whatever. Having held this out against him, he finds the whole trouble, research, time, and expense of previous preparation, thrown away, and that he must be ready, upon the most

summary warning, to proceed to trial on another indictment.

I may be told, such a case can hardly happen, in which the panel can be deprived of the whole *inducie*; but, if he may be deprived of even a part of the *inducie*, he may thereby lose the assistance of his agent and counsel, and what is more, may be deprived of the most material witnesses.

We are told, that, in this indictment, there is only an alteration in a few words of the former. There is the very greatest difference between the two indictments; which is most difficult to defend, it is not for me to say. The major proposition is the same in both; but the minor is essentially different; and the two require different sorts of arguments.

Lord Hermand.—This objection, not very material at first, has now as to the panel's interest dwindled into nothing. For as it is not pleaded that the second indictment is null, so as soon as fifteen days elapse from the abandonment by the prosecutor, he can be brought to trial. But it is argued there is a distinction where the panel has pleaded, i. e. uttered the words "not guilty," for that, it is said, constitutes *litiscontestation*. I doubt, if that be a phrase in criminal law. It does not occur in any one authority. But if it be, it must be understood as in *civilibus*. *Litiscontestation*, however, is not constituted by defences nor by pleading, it never takes effect till an act be extracted; not an act and commission of modern introduction, but an act for proof before the Court, or before the Ordinaries on oaths and witnesses.

On this analogy the powers of the prosecutor continue till a jury be impanelled, and so was found in the case of Archibald, 1708. On this ground I cannot agree to strike out of the list of cases, those in which "not guilty" has not been pleaded. On the other hand, the panel's argument cannot be redargued on what is called list of cases beyond the period of search. Additional cases are given in for the panel, in all of which the diet had been expressly deserted; but precedents enough remain to settle the law.

In 1st case, Lawson.—Diet deserted.

In 2nd case, Burns.—No desertion, and trial proceeded on second indictment.

In 3rd case, Berry.—Same procedure.

5. Mendham.—Argument that panel had no interest to object;—not understood.

7. Lindlay Crawford.—A serious case, yet without desertion; trial proceeded on second indictment. It is argued, that in none of these cases was the objection pleaded. Why? because it was not thought relevant: The whole bar has been in a dream, till the ingenuity of the counsel here discovered what had been hid from their predecessors, though with all deference to them not their inferiors in ability; and the same observation equally applies to the Court.

Is not this sufficient to establish a point of form? In one case, however, the objection

was brought into view by myself, Ballantine against Somerville. My notes correspond with Mr. Drummond's. An objection by a judge is as strong as that by a counsel.

In 10th case, Horn.—No desertion, and trial proceeded on second indictment. That second indictment is competent, inveterate usage proves.

Lord Gillies.—This objection came unexpectedly, and we gave our opinions immediately after it was stated. It happens that the opinion which I then delivered is that which I have formed after all I have since heard of the case. The opinion I gave was, that the first indictment was not abandoned by the service of the second. I understood the plea stated on the part of the public prosecutor to be, that by serving a second indictment the first was abandoned, and that there was therefore no occasion for deserting the diet. I think this doctrine erroneous. I think the first indictment did not fall by the execution of the second; and the consequence is, that as there are two indictments subsisting against the panel at the same time, one of them must be disposed of before the other is proceeded in. The service of the second indictment does not appear to me to be null, but the prisoner must be entitled to such delay as your lordships may think reasonable, to prepare for his trial upon it.

I conceive it to be certain that the Court would think it a piece of great injustice, if the public prosecutor, after serving a second indictment, should insist on proceeding with the first; but I know no principle of practice which entitles me to say he cannot do this. But whether he would be entitled to go on with the first or not, the prisoner may be entitled to insist that he should go on with it. What is the answer made to this? A broad assertion that the public prosecutor has entirely the control over his own instance,—that he may abandon it whenever he pleases,—and that we cannot insist that it shall be prolonged a single moment after he pleases. He has certainly a control over his instance,—he may pass from his first indictment,—but what is the consequence? The Court pronounces an interlocutor deserting the diet, and in such terms as they think proper. If he passes from it for no reason, or for bad reasons, your lordships may desert the diet *simpliciter*. You have the same power of checking him as any private prosecutor.

The assertion, that "his majesty's advocate possesses an uncontrolled power over his instance in all stages of a criminal process," if it is to be taken literally, is directly in opposition to the doctrine laid down in the case of Archibald in 1768; but if it merely means that he possesses a power over his instance, subject only to the control of the Court, then it means nothing but what I have already said, that although the public prosecutor may withdraw his instance, yet the effect of his doing so is, that the Court is called upon to desert the diet, but

in such terms as they think proper,—*pro loco et tempore*, with right to him to insist again; or if the prisoner shews that he acts improperly, then your lordships can desert it *simpliciter*.

I must say generally, that I am not in any case for introducing novelty in points of practice, or doing any thing inconsistent with established law, by which a panel may be prejudiced, or which has a tendency to increase the power of the public prosecutor. His powers in this country are far greater than in the neighbouring kingdom—greater perhaps than in any other country. I do not say that they are greater than they ought to be. But as they are so great they should be watched by us. Viewing the matter in this light, I think it proper to state, that the prosecutor having raised a second indictment, the Court may, upon his motion, desert the diet *pro loco et tempore*. It remains for the prisoner to shew, if he can, that the second indictment has been raised and the first abandoned for unjustifiable purposes; and if he can make out this, your lordships will desert the diet *simpliciter*.

I state these matters with reference to general principle, and not to any thing which has occurred. For there is no plea here of actual hardship, and the panel cannot be exposed to any injury whatever from what has taken place.

The only point upon which I gave no positive opinion formerly is now one of the pleas of the panel, that the service of the second indictment is null in consequence of the first indictment not having been deserted. I said formerly I did not think so, and I remain of that opinion. That opinion is formed upon considering the precedents mentioned in the additional minutes.

With reference to the practice, I need add nothing to what has been said. As to the case of Somerville, we are informed that the difficulty was started; and what was the consequence? The objection on being argued was overruled. In that case, after an indictment had been raised, executed and pleaded to, the Court, without deserting, proceeded to the trial on the second. I had the honour to sit as a judge upon that trial, and I think we were wrong. I think it was the duty of the Court to have disposed of the first indictment by interlocutor before proceeding to trial on the second; and, in not doing so, our proceedings appear to me to have been erroneous. The proceeding in the case of Hamilton, in which Duncan Forbes "consents to the deserting of the diet without prejudice to him to insist on the new indictment," appears to be more correct than that in Somerville's case. "The lord justice clerk, &c. in respect of the above consent, desert the diet upon this indictment, without prejudice to the pursuer to insist upon the new indictment as accords." That is the principle upon which I proceed, and that is the precedent which ought to be followed. For I cannot subscribe to the doctrine, that a dipel,

after having been pleaded to, may be abandoned in any circumstances in such terms as the lord advocate chooses to dictate.

All that remains is the question, what delay shall be given to the prisoner? At present I give no opinion on that.

Lord Pitmilley.—I have no reason to think, except from the anxiety displayed by the prisoner's counsel in arguing the point, that the question at issue is of any importance to the prisoner; but it is of importance to the law and to the practice of this Court; and I trust, that, after having heard and read so much on the subject, we shall be able to pronounce an interlocutor which will set this matter on a proper footing in time to come.

The argument so ably stated by Mr. Cranston is now reduced into writing, and stands upon the record of the Court; and it appears to me, that in the radical point there is a material error on that side of the bar. It is said in the minute for the prisoner, that it is incompetent to serve one libel while another, by having been pleaded to, is still current against a panel. This is the first and radical question. We must first consider whether a second libel can be served while a former is in dependence, and after the panel has pleaded guilty or not guilty to it. Now, upon this point I maintain that there is no authority in the text-books, or in the precedents of this Court, for the proposition advanced by Mr. Cranston.

A distinction has indeed been taken between the case of a prisoner having pleaded to the first indictment, and his not having as yet been called upon to plead; and it is true that many of the decided cases which have been noticed, refer only to the case of the panel not having pleaded. The case of Lawson in 1785—of Burns and Veitch in 1789—of Berry and Robertson, and Callendar in 1793—of Scott in 1794—of Lindsay Crawford and Bradley in 1812; the older cases of Nicolson in 1711, and Inglis in 1720, were all of them cases in which the panel had not pleaded to the indictment; and, in such cases, it is admitted by the prisoner's counsel in the argument which we have heard, that a second indictment may be served.

But I must venture to state that there is in principle no room for the distinction between the case of a prisoner having pleaded, and his not having pleaded to the indictment, in so far as concerns the right of the public prosecutor to serve a second indictment upon him. If there was room for this distinction, the diet could never be deserted after the prisoner had pleaded to the indictment, and an interlocutor on the relevancy had been pronounced;—the prisoner would have a *jus questionis* in the proceedings—he would be entitled to say that the Court has no power to desert the diet. This point was most ably argued in the case of Archibald, in 1768, which is reported in M'Laurin's cases. There was much learning displayed in the argument, and the report of

the case has assisted me in forming my opinion on the question now before us. It was contended in the case of Archibald, that the panel having pleaded to the indictment, and an interlocutor of relevancy having been pronounced, the diet could not be deserted. But, in the face of this plea, it was found by the Court that the public prosecutor had a right to call upon the Court to desert the diet, and they did desert accordingly.

The truth is, that it is incorrect to speak of joining issue or of liti-contestation in criminal matters; the reason is, that there is no room for the contract upon which, in civil causes, liti-contestation proceeds. The diet may be deserted at any stage of the procedure until the assize is set. "We have now," (says Mr. Hume, when treating of this subject, vol. ii. p. 86.) "advanced to that period of a criminal process, when it assumes a new shape, and is in several respects materially altered] in its nature by the naming and swearing, or, as we call it, setting of the assize of fifteen persons, who are to pass on the trial of the prisoner. In particular, that step is attended with this change in the condition of the process, that, the prosecutor no longer has it in his power for any reason to obtain a desertion of the diet, but must let his interest take its fate with the libel. Until then, and even after interlocutor of relevancy, the prosecutor, on good cause shewn for it, may still be allowed to desert the instance *pro loco et tempore*, and save his right of insisting anew, at a more convenient time and on another indictment," &c.

Accordingly, we have a number of authorities for the proposition that the public prosecutor may, before the assize is set, desert the diet, and serve a second indictment on the panel. We have the whole cases of Hamilton in 1714, of Fernie in 1720; the case of Mendham in 1804, of Somerville in 1813, of Horn in 1813, and of Bell and Douglas in 1817. There are these six cases at different periods in the practice of this Court, in which a second indictment has been served before the first was disposed of. It has been suggested, that the Court proceeded incautiously in allowing the second trial to proceed before the first indictment was disposed of. I shall speak to that point afterwards. At present I am considering whether the second indictment was regularly served; and the cases now referred to are invincible authorities to show that a second indictment may be served while a first is undisposed of. If this were a nullity and incompetent, is it possible to suppose that the Court would have allowed the trial on the second indictment to proceed? The cases now mentioned leave my mind without a shadow of doubt, that a second indictment for the same crime may be served while a former one is not disposed of and has been pleaded to.

There was an attempt made to raise an argument against this proposition, on the circumstance that the diet cannot be deserted without the leave of the Court; and it was said the

second indictment ought not to be served, pending the first, because the *induciae* are given to enable the panel to prepare his defences, and he cannot prepare himself when he is uncertain which of two charges he is to meet. This, however, is merely an equitable plea against going to trial on the particular day, and is just one of those pleas which must be left to the discretion of the Court. A panel comes forward, and states that he is harassed by the depending of two indictments, and therefore he moves the Court that the trial should be delayed. This does not prove that the service of the second indictment was irregular, and a nullity; but it may be a good reason for granting delay.

Here, then, I bottom my opinion. My fundamental proposition is, that a second indictment may be served while the first is not disposed of, and has been pleaded to.

The second link in the argument is, that if the service of the indictment was regular, then the *induciae* of fifteen days must run from the date of the service. The *induciae* cannot run from the abandonment or desertion of the first libel. There is no period known to me from which the *induciae* can run but from the period of service.

The second indictment, then, was regularly served, and the *induciae* run from that date.

In the next proposition all are agreed, viz. that no person can be made to answer upon more than one indictment for the same offence. The question then comes to turn upon this single point, Whether it is necessary in point of form for the Court to desert the diet of the first indictment? or whether it shall be held as virtually abandoned by the mere service of a second indictment? This is the only question before the Court, Whether upon a panel coming here with two indictments, both regularly served, is it necessary, in point of form, to desert the first by an interlocutor of Court; or whether it is already virtually abandoned by the service of the second? The whole question comes to this, and the opinion I give upon it, after looking to the precedents, is, that it is more regular to desert formally when the panel desires it.

I am aware that the doctrine of virtual abandonment has been acted upon in many cases. But in none of these cases was it explicitly brought under the notice of the court, except in the case of Somerville, and in that case no objection to it was taken by the panel. It does, therefore, appear to me, that when it is seriously objected by a prisoner, as in the present case, that a first indictment is hanging over his head, we should desire a minute from the prosecutor passing from the first indictment, and should pronounce an interlocutor deserting the diet.

At the same time it is plain that the panel could not suffer any injury from the virtual abandonment; because the prosecutor, by executing a second, means to abandon the first. The panel, too, knew, that the moment a se-

cond was served, he was quit of the first. Knowing this, he was free from any perplexity arising from a double plea. Therefore there is a great deal of equity in the doctrine that the first indictment falls *ipso jure*, by the serving of a second for the same crime, and I would not be for altering the practice when the panel makes no objection. But when the panel comes and states that there is a first indictment hanging over him, and desires it should be given up, the Court should declare it deserted, and then the panel should go to trial on the second indictment. The result is, that the trial proceeds upon the very day to which the *induciae* run. On Monday last we had nothing to do in this case but to declare that the first indictment was at an end; and the second being regular, and the *induciae* having run, we might have proceeded to the trial, or might have given a delay if asked for, and upon cause shewn for the indulgence.

Lord Reston.—The judges who have gone before me have anticipated the grounds of my opinion. I am not ashamed to confess that I have altered my opinion. There are two questions to be decided. One is, whether we are entitled to take into consideration the second indictment till the first is expressly abandoned. And the second is whether the service of the second is to be considered a service at all, as the first was not expressly abandoned. I confess that on the last day I was of opinion that both these points should be decided in favour of the panel—that the authority of the Court was necessary—and that the former service, before authority was obtained to the abandoning the first indictment, was not a good one. But, upon considering the subject further, I think I was wrong, in part, in that opinion. I think the prosecutor has no right to pass from his libel, to the effect of making us consider a new one, without the authority of the Court. After a first indictment has been pleaded to, the authority of the Court should be had for its abandonment.

The more important question remains, whether the service of the second, during the pendency of the first, is a nullity or a good service. I am quite clear, from the precedents which have been stated by my brethren, that the prior service is a good service. The panel's counsel have admitted, that if the panel had not pleaded, this service was a good service. Now, I cannot see what difference can be made by his pronouncing the words "Not Guilty." If liti-contestation were to go into account, it would be the impanelling of the jury which was to constitute it. Before the jury is sworn, and after the panel has pleaded not guilty, all objections are open to him, not merely preliminary objections to citation, &c.: he may state objections to the relevancy of the libel. On the other hand, the prosecutor is not precluded from getting the diet deserted *pro loco et tempore*, any more than if no pleading had taken

place. The legal *inducis* must run from the service of the second indictment. But the Court will never refuse any equitable delay which may be asked by the panel.

Lord Justice Clerk.—I concur in opinion with all of your lordships, that when objections are taken and answered in the anxious manner adopted in the present case, with regard to a matter of form and practice in our procedure, we ought to take every means of information, and decide with deliberation; and so far from regretting the time which has been spent in this discussion, I have to express my satisfaction, that on the former occasion we adopted the course which was followed of ordering a search into the practice of the Court. But, now that we have the result of that search before us, we are called upon to say, whether the public prosecutor, having, during the dependence of an indictment which has been pleaded to, and upon the relevancy of which Informations were ordered, executed a new indictment, is entitled to proceed upon it against the panel. I concur with my learned brother on my right hand, that this is the fundamental and preliminary question, and that upon it it is necessary to form our opinions in deciding this case. But after the very clear and luminous statement from the learned judge to whom I allude, I should be guilty of undue encroachment upon your lordships' time if I were to enter into a detail of the grounds of my opinion as to that preliminary objection. I shall only say in one word, therefore, that upon a careful consideration of the argument upon the principle and train of practice now before us, I have formed a clear, and will venture to say, an unalterable opinion, that there is nothing in the law or practice of this Court to prevent a public prosecutor from serving a second indictment during the dependence of a prior one; and that when the legal period of *inducis* granted by custom to a panel has expired, the prosecutor may proceed upon that indictment. As to what he is to do upon the second, that is a different question. But as to the power of serving a second indictment in such circumstances, I do not entertain a shadow of doubt. It seems completely conceded by the learned counsel for the prisoner, that such has been the practice, and a practice to which no objection can be stated, where a panel has not pleaded to an indictment. It appears, however to me, that the moment that concession is granted, there is nothing to hinder a second indictment being served in all cases. For we are brought to very narrow ground indeed, if the whole objection be, that the first indictment has been read and pleaded to; as, after the most careful attention to the distinction taken, I can find no authority whatever for it in law. I am of the opinion already delivered to your lordships, that there is no foundation for assimilating what is called *litiscontestation* in this case, to what occurs in civil cases. That point, as far as it could apply, was ar-

gued, and in reality decided against the panel, in the case of Archibald. Your lordships see, from the report in MacLaurin, that the Court had every thing before them that could be urged as to *litiscontestation* precluding the desertion of diet, and the service of another indictment; but the decision there went in fact on the ground that there was no *litiscontestation* in the sense in which it occurs in civil cases; and, at all events, that it could only take place where an indictment has been remitted to the knowledge of an assize. If, therefore, the public prosecutor may raise a second indictment, and proceed upon it at the end of the *inducis*, it removes the only difficulty which occurs in this case, and the only solid argument stated in support of the objection. For I am clear that no prejudice could arise to the panel by the procedure objected to.

There is one view of this subject to which I beg your lordships' attention. Suppose the *inducis* of a new indictment raised in this case had run to the 20th of May, the diet of the former having been continued till the 19th, it is perfectly clear, that if there had been no meeting of Court on the latter day, the instance on the former indictment would have been extinguished, and no proceeding could have taken place upon it, and nothing would have been required to be entered upon your lordships' record. On the 20th of May, however, his majesty's advocate would be entitled to move the Court to take up the indictment, the *inducis* of which had run, and the diet must of course have been called. Now, could it have been said there was any thing of the nature of *litiscontestation*, or that the panel had a *juris questio* which could have required the interference of your lordships? There is no authority for requiring it to be shown that the instance has been extinguished, and therefore to that extent the public prosecutor must be held to have abandoned his charge without the necessity of applying to your lordships. Your lordships neither have nor would have given the slightest impediment to that proceeding, but must have taken up the second indictment, and have held that with regard to the former indictment there was an end of the case.

But it was said, where the diets happen to fall on the same day the case is altered, and your lordships are called upon to adopt a proceeding which the panel says may be favourable to him. If any ground were to be made out for supposing that a panel could be regarded as standing in the situation *Charteris* is said to have been placed in, then your lordships by your authority would afford a remedy for any such hardship. If you saw the public prosecutor (which I cannot suppose possible) attempting to harass a panel by raising against him a number of indictments in succession, and leaving him doubtful upon which he was to be tried,—or take the supposition of several new ones being raised after his pleading to the first, you would exercise that power

with which you are entrusted for the good of the country, and afford immediate relief. But if, on the other hand, your lordships hold, as I do, that after service of a second indictment, both being regular, the public prosecutor has thereby declared, that it is upon the second, and that alone, he means to proceed, and is not entitled afterwards to turn round and say he will go back to the first, there is not only no injury which can arise to the accused, but he has a greater advantage than he could have upon the rule of law he now contends for, of both indictments being held to subsist, and that your lordships should interfere to have the desertion of the first recorded.

The case of Charteris, I think, has not been looked to with so narrow an eye as is proper. It appears from Mr. Hume, that Charteris had four indictments served upon him, and that he put in a printed petition stating the hardship of his case, before he was brought into Court for trial, praying for the authority of the Court to call upon the lord advocate to declare what was the course he meant to follow, and upon which indictment he meant to allege the guilt of the prisoner. The answer was made by the public prosecutor as to the one upon which he meant to rest, and it was after that that the trial proceeded, and the Court declared the others abandoned. The diet of none of them appears to have arrived. But if any such proceeding as this was to be attempted, your lordships would require no statute, no recourse to books, but only the dictates of your own consciences to know what you should do, as I have not a shadow of doubt in my mind, that a public prosecutor is not entitled to vacillate between his different charges, but that the service of a second must preclude him from going back to his first.

With regard to the practice, I am bound to say with your lordships, that when it is looked narrowly into, it does not appear to me to rest upon so clear and indisputable a basis as that it would be right for your lordships to adopt it at once as the rule of the Court. It was a fair observation, that in some cases a panel might wish to waive this or other objections; and in the case of Somerville I see an obvious ground upon which he wished to go to trial; as the second indictment being cleared of the objection stated to the first, he had no object to ask for fifteen days more. He had no palpable or tangible interest in view, his witnesses being present, and he might have suffered prejudice if delay had taken place. Mr. Clerk said he would have moved for delay on account of the absence of four witnesses at the first trial, but they were present at the last. He moved, however, for what was a substantial interest; namely, the expenses of the first indictment, but did not notice the propriety of doing away with it on the record; and there was an opinion given, that the question of expenses should be delayed till the issue of the second trial. I am clear, therefore, there was no interest in that case to insist upon the

objection, which would have merely led to a fortnight's delay. This same consideration may apply to other cases, and it is better to follow the straight forward course, without entangling ourselves with former doubtful cases not precisely in point.

Having formed a clear opinion, that there is no principle, authority, or *dictum*, to induce us to think that the *inducie* had not run from the period of service, merely from the circumstance of the two diets having occurred on the same day; I am for following that course as to which we have so clear an example in the conduct of a lawyer of the first eminence, I mean Mr. Duncan Forbes, who expressly consented that the diet should be deserted without prejudice to his right to insist on the new indictment which he had raised.

Although I have a clear opinion that the *inducie* here run from the date of service, in this and in every other case, if a person accused should state to the Court reasonable grounds for delay, I would attend to them. I am now only giving my opinion upon the law.

THE COURT THEN PRONOUNCED THE FOLLOWING INTERLOCUTOR:—

“The Lord Justice Clerk and Lords-Commissioners of Justiciary having resumed consideration of the objection stated in bar of trial at last sederunt, with the answer thereto, minutes of search as to the practice in similar cases given in in obedience to the order of Court, and heard parties procurators further: Find that the service of the second indictment during the currency of the first indictment was competent; but in respect that his majesty's advocate has judicially declared that he has abandoned the first indictment, desert the diet of that indictment without prejudice to the Prosecutor insisting against the panel on the second indictment as accords: Find that the service of the second indictment upon the panel on the third day of May current, being fifteen free days before the day of appearance, gave him the benefit of the legal *inducie* and therefore repel the objection on that plea, and ordain the panel to plead to the second indictment.”

(Signed) “D. BOYLE, I. P. D.”

Lord Justice Clerk.—William Edgar, are you guilty or not guilty?

William Edgar.—Not guilty.

Mr. Clerk.—I hope you will permit me to say, that so much of our time and attention having been already occupied, it would be extremely hard upon us to proceed now to argue the relevancy, upon which we have a great many considerations to offer. I need not suggest a particular time for your lordships. I do not think it would be proper to attempt any encroachment upon your lordships. I think you cannot go on with the trial before Monday next.

"The Lord Justice Clerk and Lords Commissioners of Justiciary continue the diet against William Edgar, panel, till Monday next at ten o'clock forenoon in this place, and ordain parties, witnesses, and assizers, and all concerned, then to attend, each under the pains of law, and

the panel in the mean time to be taken from the bar back to the castle of Edinburgh."

[See the next case.]

700. Proceedings in the High Court of Justiciary at Edinburgh, on two successive Indictments, raised by his Majesty's Advocate, against ANDREW M^cKINLEY, for administering unlawful Oaths, June 2nd—July 19th: 57 GEO. III. A. D. 1817.*

COURT OF JUSTICIARY.

JUNE 2, 1817.

Present.

Rt. Hon. David Boyle, Lord Justice Clerk.
Lord Hermand.
Lord Gillies.
Lord Pitmilley.
Lord Reston.

Counsel for the Crown.

Rt. Hon. Alexander Maconochie of Meadowbank, His Majesty's Advocate [afterwards a lord of Session and Justiciary, with the title of Lord Meadowbank.]
James Wedderburn, Esq. Solicitor-General.
H. Home Drummond, Esq. Advocate-Depute.

Counsel for the Panel.

John Clerk, Fsq.
Geo. Cranstoun, Esq.
Tho. Thomson, Esq.
Francis Jeffrey, Esq.
J. P. Grant, Esq.
J. A. Murray, Esq.
James Moncrieff, Fsq.
Henry Cockburn, Esq.

Lord Advocate.—Before your lordships call this diet, I have to state to the Court, that, upon the 20th of March last, the panel was served with an indictment to stand trial upon the 5th of April. To that indictment he was never called upon to plead, and a new libel was afterwards raised against him, the diet of which was continued on different occasions.

The first of these indictments I have abandoned; and though, according to my own understanding of the import of the precedents which have been laid before the Court in the case of Edgar, † there is no occasion for entering this on the record, yet I have no objections to this being done, if it be desired. *

Lord Justice Clerk.—Your lordships will just make a similar order here to that made in the case of Edgar.

The following entry was then made upon the record:—

"The Lord Justice Clerk and Lords Commissioners of Justiciary, in respect of what is above represented, desert the diet of the first indictment against the said Andrew M^cKinley, reserving to his Majesty's Advocate to insist upon the second indictment, as accords."

Lord Justice Clerk.—Andrew M^cKinley, attend to the indictment against you which is now to be read.

"Andrew M^cKinley, present prisoner in the Castle of Edinburgh, you are indicted and accused, at the instance of Alexander Maconochie of Meadowbank his majesty's advocate, for his majesty's interest: That albeit, by an act passed in the fifty-second year of his present majesty's reign, intituled, 'An act to render more effectual an act passed in the thirty-seventh year of his present majesty, for preventing the administering or taking unlawful oaths,' it is *inter alia* enacted, "That every person who shall, in any manner or form whatsoever, administer, or cause to be administered, or be aiding or assisting at the administering of an oath or engagement, purporting or intending to bind the person taking the same to commit any treason or murder, or any felony punishable by law with death, shall, on conviction thereof by due course of law, be adjudged guilty of felony, and suffer death as a felon, without benefit of clergy. And further, by section fourth of the said act, it is enacted, 'That persons aiding and assisting at the administering of any such oath or engagement, as aforesaid, or persons causing any such oath or engagement to be administered, though not present at the administering thereof, shall be deemed principal offenders, and shall

* See the preceding case.

† See the preceding case.

be tried as such ; and, on conviction thereof by due course of law, shall be adjudged guilty of felony, and shall suffer death as felons, without benefit of clergy ; although the persons or person who actually administered such oath or engagement, if any such there shall be, shall not have been tried or convicted." And further, by section sixth of the said act, it is enacted, "That any engagement or obligation whatsoever, in the nature of an oath, purporting or intending to bind the person taking the same to commit any treason or murder, or any felony punishable by law with death, shall be deemed an oath within the intent and meaning of this act, in whatever form or manner the same shall be administered or taken, and whether the same shall be actually administered by any person or persons to any other person or persons, or taken by any other person or persons, without any administration thereof by any other person or persons :"*Yet true it is and of verity*, that you the said Andrew M'Kinley are guilty of the said crimes, or of one or more of them, actor, or art and part: IN SO FAR AS YOU, the said Andrew M'Kinley did, at secret meetings, and on other occasions, at Glasgow, and in the vicinity thereof, in the course of the months of November and December, 1816, and January and February, 1817, wickedly, maliciously, and traitorously administer, or cause to be administered, or did aid or assist at the administering, to a great number of persons, to the amount of several hundreds, an oath or engagement, or an obligation in the nature of an oath, binding, or purporting or intending to bind, the persons taking the same to commit treason, which oath, engagement, or obligation, was in the following terms, or to the following purport :—"In awful presence of God, I, A B, do voluntarily swear, that I will persevere in my endeavouring to form a brotherhood of affection amongst Britons of every description, who are considered worthy of confidence ; and that I will persevere in my endeavours to obtain for all the people in Great Britain and Ireland, not disqualified by crimes or insanity, the elective franchise, at the age of twenty-one, with free and equal representation, and annual parliaments ; and that I will support the same to the utmost of my power, either by moral or physical strength, as the case may require: And I do further swear, that neither hopes, fears, rewards, or punishments, shall induce me to inform on, or give evidence against, any member or members, collectively or individually, for any act or expression done or made, in or out, in this or similar societies, under the punishment of death, to be inflicted on me by any member or

members of such societies. So help me God, and keep me steadfast:"—Which oath, or engagement, or obligation, to the foregoing purport, did bind, or did purport or intend to bind, the persons taking the same to commit treason, by effecting, by physical force, the subversion of the established government, laws, and constitution of this kingdom, and especially by obtaining annual parliaments and universal suffrage by unlawful and violent means. AND, MORE PARTICULARLY, (1.) at a secret meeting held at the house of Hugh Dickson, then weaver in Abercromby street, or Calton of Glasgow, or elsewhere at Glasgow, or in the immediate vicinity thereof, you the said Andrew M'Kinley did, upon the 20th day of December, 1816, or upon one or other of the days of that month, or of November immediately preceding, or of January immediately following, wickedly, maliciously, and traitorously administer, or cause to be administered, or did aid or assist at the administering an oath, or engagement, or obligation, in the terms above set forth, or to the same purport, to Peter Gibson, John M'Lauchlane, John Campbell, and Hugh Dickson, all present prisoners in the Castle of Edinburgh, or to one or other of them, and to other persons, whose names are to the prosecutor unknown, the said oath, or engagement, or obligation, to the said purport, binding the persons taking the same to commit treason, as said is. AND, FURTHER, (2.) you the said Andrew M'Kinley did, upon the 1st day of January, 1817, or on one or other of the days of that month, or of November or December immediately preceding, at a secret meeting, held in the house of William Leggat, change-keeper, King street, Tradestown, in the vicinity of Glasgow, or elsewhere at Glasgow, or in the vicinity thereof, wickedly, maliciously, and traitorously administer, or cause to be administered, or did aid or assist at the administering, an oath or engagement, or obligation, in the terms above set forth, or to the same purport, to the said Peter Gibson, John M'Lauchlane, John Campbell, and Hugh Dickson ; as also, to James M'Ewan, now or lately carding-master at Humphrie's Mill, Gorbals of Glasgow, and M'Dowall Pate, or Peat, now or lately weaver in Piccadilly street, Anderston, in the vicinity of Glasgow, who, conscious of their guilt in the premises, have absconded and fled from justice ; as also, to John Connelton, or Congleton, now or lately cotton-spinner in Calton of Glasgow, or to one or other of them, and to other persons, whose names are to the prosecutor unknown, the said oath, or engagement, or obligation, to the said purport, binding the persons taking the same to commit treason, as said

is. AND, FURTHER, (3.) you the said Andrew M'Kinley did, upon the 4th day of January, 1817, or on one or other of the days of that month, or of November or December immediately preceding, at a secret meeting, held in the house of Neill Munn, innkeeper and stabler, in Ingram street, Glasgow, or elsewhere at Glasgow, or in the vicinity thereof, wickedly, maliciously, and traitorously administer, or cause to be administered, or did aid or assist at the administering, an oath, or engagement, or obligation, in the terms above set forth, or to the same purport, to the said Peter Gibson, John M'Lauchlane, John Campbell, Hugh Dickson, M'Dowall Pate, or Peat, and James M'Ewan; as also, to James Hood and John Keith, both present prisoners in the Castle of Edinburgh, Andrew Somerville, John Buchanan, and James Robertson, all now or lately prisoners in the tolbooth of Glasgow, or to one or other of them, and to other persons whose names are to the prosecutor unknown, the said oath, or engagement, or obligation, to the said purport, binding the persons so taking the same to commit treason, as said is. AND, FURTHER, you the said Andrew M'Kinley did, upon the 5th day of February, 1817, or on one or other of the days of that month, or of January immediately preceding, at a secret meeting, held at the house of John Robertson, innkeeper and stabler in Gallowgate of Glasgow, or elsewhere at Glasgow, or in the immediate vicinity thereof, wickedly, maliciously, and traitorously administer, or cause to be administered, or did aid or assist at the administering, an oath, or engagement, or obligation, in the terms above set forth, or to the same purport, to the said James Hood, James Robertson, Andrew Somerville, and John Buchanan, as also to James Finlayson, present prisoner in the Castle of Edinburgh, or to one or other of them, and to other persons, whose names are to the prosecutor unknown, the said oath, or engagement, or obligation, to the same purport, binding the persons taking the same to commit treason, as said is. And you the said Andrew M'Kinley having been present at a secret meeting, held for the purpose of administering, or causing to be administered, the said oath or engagement, or other purposes to the prosecutor unknown, at the house of Alexander Hunter, changekeeper in the Old Wynd of Glasgow, on the 22nd day of February, 1817, and having been there apprehended, conscious of your guilt in the premises, did assume the false name of John Brotherstone; and having been taken before Robert Hamilton, Esquire, Sheriff-depute of Lanarkshire, you did, in his presence at Glasgow, on the 28th day of February, 1817,

and on the 11th day of March, 1817, emit and subscribe two several declarations; and having been taken before Daniel Hamilton, Esquire, one of the Sheriffs-substitute of Lanarkshire, you did, in his presence, at Glasgow, on the 4th day of March, 1817, emit and subscribe a declaration; and having been taken before Hugh Kerr, Esquire, one of the Sheriffs-substitute of Lanarkshire, you did, in his presence, at Glasgow, on the 5th day of March, 1817, emit and subscribe a declaration; and having been taken before James Wilson, Esquire, Sheriffs-substitute of the county of Edinburgh, you did, in his presence, at Edinburgh, on the 18th day of March, 1817, emit and subscribe a declaration;—all which declarations, being to be used in evidence against you at your trial, will for that purpose, be lodged in due time in the hands of the Clerk of the High Court of Justiciary, before which you are to be tried, that you may have an opportunity of seeing the same. At least, times and places foresaid, the said oath or engagement, or an oath or engagement to the same purport, binding, or purporting to bind, the person taking the same to commit treason, as said is, was wickedly, maliciously, and traitorously administered, or caused to be administered, and some person or persons did aid or assist at the administering thereof; and you the said Andrew M'Kinley are guilty thereof, actor, or art and part. All which, or part thereof, being found proven by the verdict of an assize, before the Lord Justice General, the Lord Justice Clerk, and Lords Commissioners of Justiciary, you the said Andrew M'Kinley ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming.

"H. HOME DRUMMOND, A. D."

LIST OF WITNESSES.

1. *Robert Hamilton*, Esquire, sheriff-depute of Lanarkshire.
2. *Daniel Hamilton*, Esquire, one of the sheriffs-substitute of Lanarkshire.
3. *Hugh Kerr*, Esquire, one of the sheriffs-substitute of Lanarkshire.
4. *James Thompson*, clerk to John Drysdale, sheriff-clerk of Lanarkshire.
5. *Matthew Burns*, clerk to George Salmond, procurator-fiscal of Lanarkshire.
6. *John Leslie*, clerk to the said John Drysdale.
7. *Joseph Reid*, writer in Glasgow.
8. *George Salmond*, procurator-fiscal of Lanarkshire.
9. *James Wilson*, Esquire, one of the sheriffs-substitute of the county of Edinburgh.
10. *Archibald Scott*, procurator-fiscal of the county of Edinburgh.

11. *James Garrie*, writer, Sheriff-clerk's office, Edinburgh.
12. *Alexander Calder*, sheriff-officer in Glasgow.
13. *Alexander Hunter*, change-keeper, Old Wynd of Glasgow.
14. *Marion M'Laren*, or *M'Lachlan*, now or lately servant to the said Alexander Hunter.
15. *John Robertson*, inn-keeper and stabler, Gallowgate Glasgow.
16. *Agnes Campbell*, wife of *Thomas Dow*, steam-boiler maker and smith at Girdwood and Company's foundry in Hutchesontown, in the vicinity of Glasgow.
17. *Janet Rentoul*, now or lately servant to *Neill Munn*, innkeeper and stabler in Ingram-street, Glasgow.
18. *Alison Wilson*, now or lately servant to the said *Neill Munn*.
19. *Matthew Fyfe*, spirit-dealer in Wilson-street, Glasgow.
20. *Jean Boyd*, wife of the said *Matthew Fyfe*.
21. *William Leggat*, change-keeper, in King-street, corner of Centre-street, Trades-ton, in the vicinity of Glasgow.
22. *John Mitchell*, weaver, residing in *Wilkie's Land*, Charles-street, Calton of Glasgow.
23. *Hugh Dickson*, present prisoner in the Castle of Edinburgh.
24. *Peter Gibson*, present prisoner there.
25. *John M'Lachlane*, present prisoner there.
26. *William Simpson*, present prisoner there.
27. *John Campbell*, present prisoner there.
28. *James Hood*, present prisoner there.

H. HOME DRUMMOND, A. D.

LIST OF ASSIZE.

County of Edinburgh.

David Gray of Snipe.
John Thomson of Burnhouse.
George Jeffrey, grocer in Dalkeith.
Richard Muschet, merchant there.
James Mutter, farmer, Longside.
James Niblie, farmer, Easter Cowden.
David Thomson, farmer, Wester Cowden.

County of Haddington.

John Anderson of Whitbeugh.
Thomas Mitchell of Westburn Mains.
Charles Crawford, farmer, East Fortune.
Mark Turnbull, farmer, Upper Bolton.
James Wilson, farmer, Bolton.

County of Linlithgow.

William Wilkie of Magdalens.
William Skillinglaw of Boghead.
Andrew Mitchell, farmer at Kinneil Kerse.
John Ross, farmer at Borrowstown.
John Thomson, farmer at Inveravon.

City of Edinburgh.

Richard Johnston, banker in Edinburgh.
James M'Kenzie, goldsmith there.
Robert Green, watchmaker there.
Robert Slater, dye-cutter there.
William Nelson, painter there.

James Yule, baker there.
Andrew Grierson, tailor there.
Patrick Main, painter there.
John Lauder, merchant there.
Samuel Hopperton, grocer there.
John Brown, merchant there.
Robert Mitchell, merchant there.
William Lockhart, tinsmith there.
John Sinclair, seed-merchant there.
William Scott, pewterer there.
Alexander Johnston, ironmonger there.
George Gray, baker there.
Thomas Edmonstone, ironmonger there.
William Murray, baker there.
John Smith, spirit-dealer there.
Thomas Hunter, merchant there.

Town of Leith.

John Sharp, wine-merchant in Leith.
Archibald M'Dowall, merchant there.
James Ogilvie, wine-merchant there.
Robert Strachan, merchant there.
Robert Sanderson, cooper there.
Robert Brunton, merchant there.
John Calder, grocer there.

D. BOYLE.

AD. GILLIES.

GEO. FERGUSON.

Lord Justice Clerk.—*Andrew M'Kinley*, What do you say to this indictment? Are you guilty or not guilty.

Andrew M'Kinley.—Not guilty.

Lord Justice Clerk.—Have counsel any objections to state to the relevancy of this indictment?

Mr. Cranston.—My lords, it will be in the recollection of your lordships, that a person of the name of *William Edgar** was lately indicted at your bar, upon a charge of having administered oaths binding the takers to commit treason, against the statute of the 52nd of the king. He pleaded not guilty, and various objections were stated to the relevancy of the indictment. Your lordships heard a debate upon the subject, and you appointed informations to be given in. But the public prosecutor deserted the diet of that indictment, and served him with a new one.

The prisoner, *Andrew M'Kinley*, now at your bar, had been indicted in terms precisely the same with *Edgar*. That indictment has also been withdrawn, and a new one served, which you have now before you.

Your lordships will recollect, that among the objections stated to the relevancy of *Edgar's* indictment, it was pleaded, that it involved a charge of treason, and therefore was not cognizable in this form;—first, because the charge of treason was not laid in the major proposition of the indictment; and, again, because your lordships, proceeding according to the Scotch form of trial, could not try that offence without the intervention of a grand jury, and without

* See the preceding case.

allowing the prisoner a peremptory challenge of the array, and other privileges competent by the law of England to persons under trial for high treason.

The indictment which your lordships have just heard read is in terms somewhat different from that in Edgar's case which has been withdrawn; and, it is for your lordships now to consider, whether there are any objections that can be competently stated to the relevancy of the present indictment; or rather, I should say, whether any one objection that could be competently stated to the last indictment, may not also be stated here.

Before I proceed to state what I conceive to be various objections to the relevancy of this indictment, I must take the liberty to make one preliminary observation. It is this—that, in all criminal cases, where there is room for construction, every thing must be strictly interpreted in favour of the accused, and against the prosecutor. I cannot make this observation without at once commanding the assent of every body, for this has always been recognised as a sacred principle of law; but if we look at many trials at former periods, both in our own and in the neighbouring country, we shall find, that while this maxim was admitted in words, it was denied in substance, and frittered away by distinctions and refinements that rendered it nugatory, and at other times while admitted in theory in its full extent, it was overlooked and forgotten in practice. It resembles those truths, in morals, which we repeat till they cease to have any influence on our conduct. The uncertainty of human life, for instance, is always in our mouths, and we act as if we had a grant of life for a century. Thus there are maxims in law which become so familiar, that they lose all their effect.

Permit me, therefore, not only to recal the maxim to your recollection, but forgive me, if, in a few words, I enforce it. Because it appears trivial, therefore I wish to insist upon it.

The foundation of this maxim is obvious. Even in the dispensation of commutative justice, where there is a conflict between the patrimonial interests of individuals, you know, that, in common law, some cases receive a liberal, and others a strict interpretation. In some cases you control the words of a writing by equity; and in others you take it according to the strict letter, though contrary to the presumed intention of parties. Why are these different rules of interpretation adopted? Merely because one plea is favourable and another the reverse; because one, for example, infers an inconvenient restriction on commerce, or the use of property, or one party is *lucro captando*, while the other is *in damno vitando*. On such slight grounds, you hold yourselves entitled to apply the one mode of construction or the other.

If that be the case in civil matters, much more must it be in those tribunals where justice is called upon not to wield the balance but the sword. There, there is no conflict or oppo-

sition between the interest of the parties at the bar. If it is for the advantage of the prisoner that there should be a strict interpretation in all cases, it is ten times more for the interest of the public prosecutor, or rather of the community which he represents. The object of punishment is lost—it becomes highly pernicious if inflicted when a moral possibility of innocence remains, either because the charge is ambiguously expressed, or the evidence in support of it is inconclusive. It is a sacred rule, that every one avenue should be left open to which innocence may have occasion to resort, though by it guilt may be enabled to escape. *Si errandum est sine jure absolvere quam per injuriam condemnare est sanctius; nam in illo error, in hoc facinus.*

Accordingly, from the first dawn of jurisprudence, it will be found in every criminal code. It forms part of the 155th law of the title *de Regulis Juris*. In *poenalibus causis benignius interpretandum*—a treatise which, I will venture to say, is the greatest body of concentrated wisdom on the subject of jurisprudence to be found in any uninspired work.

This rule extends to the law or statute on which an accusation is laid—to the indictment on which the trial proceeds—to the evidence led against the prisoner—to the verdict returned—and, above all, if the *corpus delicti* consists in the uttering of words, it extends to the construction of those words.

This principle of construction has been acknowledged again and again by the legislature, more particularly in the law of treason, which you are now called upon to administer; or, at least, which bears directly upon the indictment, the relevancy of which you are now to try. You know there was an act passed in England in the reign of Elizabeth against clipping or defacing the coin. It is the 5th of Elizabeth, cap. 11, which prohibits the operations of clipping, washing, rounding, or filing. But that statute was found not to apply to any other mode of lessening the value of the coin, though precisely the same in effect; and, accordingly, the statute of the 18th of Elizabeth, cap. 1, was made against impairing, diminishing, falsifying, scaling, and lightening, and it was made on this remarkable preamble:—"Because the said law," (5th Elizabeth) "being penal, ought to be taken and expounded strictly according to the words thereof, and the like offences, not by any equity to receive the like punishment or pains." Here then is a declaration of the legislature itself, in a statute relative to high treason, explaining the manner in which such statutes ought to be construed.

I may likewise call your attention to what the author, from whom I have borrowed this remark, has said upon the construction of penal statutes. Sir William Blackstone observes, "Penal statutes must be construed strictly. Thus the statute 1 Edward VI. c. 12. having enacted, that those who are convicted of stealing *horses* should not have the

benefit of clergy, the judges conceived that this did not extend to him that should steal but one *horse*, and therefore procured a new act for that purpose in the following year. And, to come nearer our own times, by the statute 14 Geo. II. c. 6., stealing sheep, or other cattle, was made felony without benefit of clergy. But these general words, "or other cattle," being looked upon as much too loose to create a capital offence, the act was held to extend to nothing but mere sheep. And, therefore, in the next sessions, it was found necessary to make another statute 15 Geo. II. c. 34., extending the former to bulls, cows, oxen, steers, bullocks, heifers, calves, and lambs, by name.*

Thus, your lordships will observe, that even where words sufficiently appropriate in their ordinary sense were employed, yet if it was possible to take the offender out of the operation of the statute by any construction however rigorous, that construction, though not consistent with the probable, I may say the manifest intention of the legislature, was allowed. I cannot give a more striking instance of the application of the rule which I am endeavouring to enforce, than this which is borrowed from the law of England. I shall afterwards call your attention to some determinations in our own law to the same effect.

In the present instance it is obvious, that the application of the principle of strict construction is imperatively required. *First*, because this is a penal case; *Secondly*, because it is a case where the highest penalty of the law may be inflicted; *Thirdly*, because the crime charged consists in the use of words, upon the construction of which the prisoner's fate depends; and, *Lastly*, because these words are stated to have been used not by a person well educated, and critically acquainted with language, but by one who is in the lowest situation of life, and who must be presumed to be totally ignorant of the force and delicacy of terms.

Having made these observations, let me call your attention to the major proposition of this indictment. It sets forth, that, "by an act passed in the fifty-second year of his present majesty's reign, entitled, 'An act to render more effectual an act passed in the thirty-seventh year of his present majesty, for preventing the administering or taking unlawful oaths,' it is *inter alia* enacted, 'That every person who shall, in any manner or form whatsoever, administer, or cause to be administered, or be aiding or assisting at the administering of an oath or engagement, purporting or intending to bind the person taking the same to commit any treason or murder, or any felony punishable by law with death, shall, on conviction thereof by due course of law, be adjudged guilty of felony, and suffer death as a felon, without benefit of clergy.'" And then follow other two sections of the same act, which it is unnecessary for me to read.

With regard to this proposition, I am ready to admit, that, in point of form, it is correct, by founding on and quoting the words of the statute on which the accusation is laid. It does not appear to me, that there is much room for interpretation here. If there be room for any, it is as to the meaning of the words "purporting and intending," that is, whether the legislature means the intention of the party administering or taking the oath, or the intendment of the oath itself. I apprehend it must be clear to you, without my saying any thing upon the subject, that the import of the word "intending," is, that it must be an oath, the *intendment* of which is to bind to the commission of the crime, and that it is of no consequence whether the person who administers had criminal intentions or not, provided the intendment of the oath is not criminal. If there be an ambiguity in the use of the term, the prisoner must have his choice in which sense it shall be taken. But there is no ambiguity. It could not have been the meaning of the legislature to punish the secret intentions of a person administering such an oath; for unless that intention had been communicated, the offence in contemplation, namely, the imposition of the unlawful obligation, could not have been committed. If the words of the oath do not express the unlawful obligation, no person could conceive that it was undertaken; and if it was not undertaken, a capital punishment could not be meant to be inflicted on the person who intended to administer, but who did not administer, an oath of that import.

On this subject, I may content myself, by recalling to your recollection Mr. Clerk's observations upon the term in question. In the act of the 37th of the king, it was the object of the legislature to punish a misdemeanour, and therefore the words employed are different from those of the statute on which the present indictment is founded. The words, in the 37th of the king, are "purporting or intended" to bind, the passive, instead of the active, participle being used. Observe the difference of the phraseology. The term employed here is "intending," not intended; it relates to an oath having the intendment to bind to the commission of the crime. And, as I have already remarked, it is plain that unless that interpretation was meant by the legislature, the punishment which I have mentioned would not have been inflicted,—for where would have been the offence, if the administrator did not by words communicate with the party taking the oath, in such a manner that the taker should have a sense that such an obligation was imposed? It is needless for me to insist more upon this subject; for in Edgar's case, Mr. Solicitor-General admitted, it was the purport or expression of the words which the legislature had in view; and, accordingly, the oath is recited *verbatim* in this indictment, and the subsumption is, that the words cited purport the obligation.

* 1 Comm. 88.

I have but a single observation more to offer on this major proposition. The oath described is one "purporting or intending to bind the person taking the same to commit *any* treason." It is not treason in general, but any treason; the word being disjunctive, and referring to any one of the different treasons known in law I shall recur to this afterwards.

Let us see next what is the minor proposition of this indictment:—"Yet true it is and of verity, that you the said Andrew M'Kinley are guilty of the said crimes, or of one or more of them, actor, or art and part: In so far as you, the said Andrew M'Kinley did, at secret meetings, and on other occasions, at Glasgow, and in the vicinity thereof, in the course of the months of November and December, 1816, and January and February, 1817, wickedly maliciously, and traitorously administer, or cause to be administered, or did aid or assist at the administering, to a great number of persons, to the amount of several hundreds, an oath or engagement, or an obligation in the nature of an oath, binding, or purporting or intending to bind, the persons taking the same to commit treason."

Your lordships will recollect the objection which we stated to the former indictment, and which you thought deserving of consideration. It was, that the indictment involved a charge of treason. Now, I ask, does not this indictment involve the very same charge, when it sets forth, that the oath was wickedly, feloniously, and *traitorously* administered? If it were set forth, that a person had been guilty of carrying off an article feloniously, and a verdict was found accordingly, it would unquestionably be a conviction of felony. For the same reason a verdict of guilty, in this case, would be a conviction of treason. The very same objection, therefore, which occurred to the former indictment, on this ground, occurs here also. It is true, that the narrative of the former indictment was fuller; it detailed a number of circumstances respecting the treason alleged to have been committed; but it was not on the narrative that our objection rested, for if that had been the case, the prosecutor might have given up the narrative as matter of explanation only, which he was not bound to prove, and the defect of his libel would have been cured. The objection there, as in this case, rested upon the circumstance, that treason was a substantive part of the charge in the minor proposition, which could not be separated from it, and must therefore necessarily go to proof.

If the prisoner was convicted under this libel, he would be convicted necessarily of treason,—without the presentment of a grand jury,—without the benefit of a peremptory challenge,—without any one privilege which the law of England, as contradistinguished from our common law, in criminal matters, confers on the accused.

It will be farther attended to, that this is not one of those cases in which the lord advo-

cate can alter his charge after the prisoner has pleaded. If a person be accused of murder his lordship may restrict the libel to culpable homicide, and the jury may convict for that offence, though culpable homicide is not mentioned in the indictment. But that proceeds upon the ground that the one crime is of the same species and denomination as the other. Where the crimes are generically different, it is impossible to substitute the one for the other. Thus, in 1668, in the case of Graham, on a charge of theft, the jury brought in a verdict of reset of theft; but it was found that no sentence could pass on that verdict, because reset of theft is a crime radically different from theft. The same thing happened in the case of Charles Stewart, in 1800. Here the public prosecutor has charged the prisoner with treason, and therefore he cannot alter his libel into a charge of felony: for, if that were the case, the prisoner, as Sir George Mackenzie observes, might come to the bar as unprepared to defend himself, as if he had never been served with an indictment at all. In like manner, Peddie was tried at the circuit at Perth alternately for a rape, and an assault with intent to ravish; the jury found him guilty of assault only; and the Court of Justiciary here, to whom the case was remitted, decided that no punishment could pass upon that verdict.*

If your lordships were of opinion that this point required to be argued upon informations in Edgar's case, there is the same necessity for informations here. For what reason the public prosecutor has thought fit to desert the former indictments, and to serve new ones, containing the very same defect, I cannot divine. Of one thing I am certain, that the same defect does exist, and that the mere omission of the narrative or preamble, cannot in the smallest degree change the substance of the charge.

We come now to the consideration of the words of this oath, which we are told purports or intends to bind the persons taking it to commit felony. There are four clauses in this oath, upon each of which, separately, I shall beg to make a few observations. But, before doing so, let me again entreat you to keep in mind, and to apply the principles with which I set out. You have seen how statutes were interpreted, though composed by all the wisdom of Parliament, and when it must be presumable that the legislature knew the force of the words which they employed. But here you have men in the lowest situation of life, using words, of the force of which they might not be aware; *a fortiori*, therefore, must you construe these words with the utmost latitude in favour of the prisoner, and the utmost strictness against the prosecutor.

I formerly gave some illustrations upon this subject from the law of England; permit me now to add one or two from our own law.

* 4 Hume, 308.

There is a case mentioned by Mr. Hume, in which a person of the name of Janet Ramsay, when precognosced, emitted a declaration confessing the crime laid to her charge. When brought to trial, she pleaded Not Guilty; but, besides other satisfactory evidence her declaration was laid before the jury, who returned a verdict finding her guilty "in terms of her confession," meaning undoubtedly the declaration which she emitted when precognosced. Yet you found that no sentence could pass upon that verdict, because the prisoner had not confessed the crime at the bar; and an extrajudicial declaration of guilt, is not, technically speaking, a confession.

But take a case more nearly resembling the present. When a person is accused of perjury, the prosecutor must establish that the oath sworn is contrary to the truth; and it is the province of the Court, in judging of the relevancy of the indictment, to determine whether the oath is reconcileable to the truth or not. Now, I entreat your lordships to observe how strictly the Court has been in use to construe the words of an oath in favour of a prisoner, attempting, by every possible means, to remove the inconsistency; and, if it can be removed, the libel is held not to be relevant, and the prisoner cannot go to trial upon it. In support of this observation, I must refer to the learned author, so often quoted. "The substance of the crime, and that which all the other particulars in the description of it only modify and limit is, that a plain falsehood be explicitly and wilfully affirmed. For, if either there is any doubt about the true state of the fact, or about the sense in which the panel's words are to be understood; or if they can in any reasonable way be reconciled with the truth, or with an innocent intention; or, in general, if it is not manifest and obvious, but matter of likelihood only, and of inference and comparison of many particulars, that he had a false and corrupt meaning, this shall save him from the accusation of perjury. Indeed, it would be very dangerous to convict any one upon such constructive grounds; considering the imperfection of language, and the still more imperfect use which so many persons have of it, and how unequal their degrees of intelligence in the affairs of life, and even their degrees of capacity for the observation of facts."*

There is not one of these observations that would not apply in this case, where you have the words of an oath to construe, just as in a case of perjury. Now, observe the precedent to which Mr. Hume refers:—"This scrupulous and equitable caution was in particular observed in deciding on the relevancy of the libel against Archibald M'Killop. This man had been a witness in the trial of certain persons for a violent deforcement of the revenue officers, and had given a testimony which, in many points, was very favourable to the panels.

Among other things, he had sworn that they addressed the revenue officers in a moderate and inoffensive manner, 'desiring them to walk soberly, and to make no disturbance.' Now, in this article, besides others, he was charged with perjury; inasmuch (said the libel) as it will be proved, that the persons accused went violently up to the officers, demanded their arms, and threatened to blow them up if they resisted. It was pleaded for the panel, that the two assertions were not absolutely inconsistent, for that in swearing to the one sort of address and course of behaviour, he did not absolutely exclude the other, which might be used at a different period of the fray, and without his attending to it at the time." And the Court held "the allegation in the second article of the said indictment charged, in these words:—'That the panel swore, that at the time there mentioned, the said James M'Kenzie desired the said Alexander Cook and Alexander Thomson, to walk soberly and make no disturbance,' *not relevant and refuse to admit the same to probation.*" I do not ask of your lordships to construe the oath in this indictment more strictly—the mere possibility of innocence induced the Court to hold, that perjury was not relevantly charged.

Let me intreat you, then, to apply the same principles to this oath, if it be necessary to apply them. I say, if necessary; for, I state, that if you were to construe it with the utmost latitude against the prisoner, with the same latitude as you would construe a last will, a marriage contract, or any other document the most favoured in law, it will not yield the sense ascribed to it by the prosecutor.

It consists of four clauses. Let us consider each of them.

The first is: "I will persevere in my endeavours to form a brotherhood of affection among Britons of every description, who are considered worthy of confidence." Is there any thing in the smallest degree *blameable*, not to say *treasonable*, in this? May not a brotherhood be formed of any set of persons, without a criminal, without a treasonable purpose? It was to be formed of persons worthy of confidence; it was to be a brotherhood of affection, It may have been intended to have been criminal, or it may have been intended to have been innocent; but there is nothing in the purport of these words which can be interpreted as *expressing* a design of forming a brotherhood for improper purposes. Upon that clause I think it unnecessary to say a word more.

Then, what is the second clause? "That I will persevere in my endeavours to obtain for all the people in Great Britain and Ireland, not disqualified by crimes or insanity, the elective franchise, at the age of twenty one, with free and equal representation, and annual parliaments." As the law stands at present, there are neither annual parliaments, nor universal suffrage; but is there any impropriety in those who think it would be for the advantage of the constitution to endeavour to ob-

* 1 Hume, 127.

tain them, provided they do so according to law? It is impossible for a moment to doubt that it is lawful so to do. There are those who think that an alteration of this kind—I mean the adoption of annual parliaments, and universal suffrage—would be a fundamental alteration of the constitution of Great Britain; but you know that it is laid down by the best authorities, that there is no law so fundamental that it may not be innovated—no principle so fixed that it may not be changed. Parliament may new-model the succession to the Crown—it may alter the religion of the country—it may alter its own constitution. Parliaments, for instance, were not always septennial. There is no doubt that annual parliaments and universal suffrage may be obtained in a legal mode, in the same manner as any other change, by a parliamentary act; and those who hold these alterations to be in their nature injurious to the constitution, never doubted, notwithstanding, that they may be competently and legally introduced. In what respect is this country distinguished from every country upon the face of the earth, but that every subject of the land may approach parliament, the fountain of absolute power—may suggest alterations in the laws of the country—and may press, by solicitation and argument, the adoption of measures which he supposes to be advantageous? It is a libel upon the constitution to say there is any crime in this clause of the oath, provided the endeavours it alludes to are lawful.

We come to the third clause, to which I call your attention more particularly, as it was a subject of much argument in the former discussion: "I will support the same to the utmost of my power, either by moral or physical strength, as the case may require." In this clause, you are, for the first time, as I conceive, called upon to exercise the power of interpretation. It is ambiguous in two respects; and surely it is not surprising that persons in the situation of those who formed this brotherhood should have fallen into ambiguous and incorrect modes of expression.

The first ambiguity is in the use of a relative, without any means of discovering the antecedent. "I will support *the same*:" What is the same? There are three previous things mentioned, all, or any of which, may be the antecedent. How are you to choose which of these is the antecedent? If it be of importance to the prisoner, which it is not, he is entitled to choose the antecedent; and, if any one of them rendered the oath innocent, while the others inferred guilt, he would be entitled to choose that for his antecedent, and you must adopt the innocent interpretation. Fortunately, however, in the present instance, it is indifferent which of them you select, for they are all equally harmless. Let us try them one by one. The leading member of the sentence is, "I will persevere in my endeavours to form a brotherhood." That brotherhood may be the antecedent. It is the leading object in the sentence; after which follows an obligation to

do certain things; and then comes the engagement to support *the same*, signifying, according to that construction an engagement to support the brotherhood. That will not infer any thing criminal; and, at all events, will never infer the crime charged against the prisoner. The brotherhood might be supported in many ways. When illegally attacked, it might with propriety be defended; and when legally attacked by the magistrates, the defence of it, though it might be criminal and a felony, is not treason; and, therefore, even if the oath were to support that brotherhood by illegal means, that would not be an obligation of the nature charged in the minor proposition; for there is no harm in supporting a brotherhood of affection among Britons of every description; at all events it is not the crime of treason.

Take another view.—He says, he will endeavour "to obtain the elective franchise, at the age of twenty-one, with free and equal representation, and annual parliaments." If you do not take the leading antecedent in the sentence, according to ordinary construction, you should take that immediately preceding the relative, namely, annual parliaments and universal suffrage. Is there any thing improper or criminal in supporting those? You can support nothing not in existence; they must be obtained before they can be supported. If, therefore, you take the first, or if you take the last members of the sentence for the antecedent, nothing like a criminal obligation can be extracted.

Take the only other supposeable antecedent, "I will persevere in my *endeavours* to obtain for all the people in Great Britain and Ireland, not disqualified by crimes or insanity, the elective franchise, at the age of twenty-one, with free and equal representation, and annual parliaments." Is there any thing criminal in supporting one's *endeavours* to obtain? It infers a solecism, and is contrary to the ordinary forms of speech. To support endeavours, is just to endeavour; and, therefore, if there be any choice as to these antecedents, this is the one that ought to be rejected. But, suppose these ignorant people meant, "to support their endeavours to obtain these objects," where is the illegality in that? If they supported their endeavours in a lawful manner, it is what every good subject, holding these opinions, should be inclined to do.

But, the prosecutor observes, that the oath does not stop at supporting the endeavours, but engages to "support the same to the utmost of my power, either by moral or physical strength, as the case may require." Here, it seems to be thought, that the sting of the case lies.—I ask your lordships, when a person comes under an engagement to exert all his endeavours, or to act to the utmost of his power upon any one occasion, how that engagement should, in fairness, be construed. The construction adopted in every case is this, that he will exert his *lawful* endeavours. It is the maxim of law, as Mr. Clerk observed, when we were last here,

id tantum facere possumus, quod de jure facere possumus. There is no obligation which a man undertakes to do, in this or any well-governed country, that does not imply, if it be not expressed, that what he engages to do is lawful. You may exclude that presumption by declaring you will do it unlawfully; but, if not so excluded, it is always understood.

The observations which I have made on these three antecedents separately, apply to them all when taken together; and if none of them singly infers criminality, they will not infer it when combined.

But, it is the phrase *physical strength* which seems to have laid hold of the imagination of the public prosecutor; and he seems to think that the mere use of that term necessarily implies, that a rising in arms was in contemplation, and that the persons engaging to use their endeavours to obtain these things, were to rise in rebellion to obtain them. The lord advocate imagines all this, merely because the term "*physical strength*" is introduced.—But I would observe, that this obligation was imposed on an individual, not upon a body; and there was no such thing as binding him to exert his endeavours in conjunction with the endeavours of others. It was upon each, in his individual capacity, that an obligation was imposed.

But that is, comparatively speaking, of little consequence: let it be granted that it was a collective obligation, what did it import? Is it that they shall exert their physical strength in an unlawful way? No; for, according to the maxim I stated, the presumption is, that the mode was to be a lawful one. Physical strength may be exerted in twenty ways which are lawful; and therefore you are to infer it was to be lawfully exerted to obtain the objects in view.

To show the fallacy of any other construction, let us look a little into the nature of the alternative obligation to exert *moral strength*. In the last argument on this head, it was fairly admitted, that an obligation to endeavour to obtain these objects by moral strength would not have been in the smallest degree criminal, and never could have been construed to infer treason. But, you must observe, that treason may be committed in the exercise of moral, just as well as in the exercise of physical strength. For instance, an individual, in order to obtain these objects of annual parliaments and universal suffrage, so much desired by the brotherhood, might speak or write advisedly, that the present family has no right to the crown—or that parliament, without consent of the crown, is not entitled to alter the succession; which is high treason under the 6th of queen Anne. But, because a man binds himself to endeavour to procure annual parliaments and universal suffrage by moral strength, is he bound to commit these or any other treasons? That would be a construction so forced, that, even on the other side of the bar, it would not be listened to for a moment. Why,

then, construe the obligation to exercise physical strength, so as to infer that it was to be exercised in an unlawful manner? The one interpretation is as much strained as the other. And if physical strength may be lawfully exerted, the presumption ought to be, that the lawful exertion of it was in the view of the parties. Or, supposing even that they contemplated an unlawful act, it does not necessarily follow that they contemplated an act of treason.

Physical strength might be exerted lawfully to obtain these objects, by forming this brotherhood—by collecting its members together—by defending them against unjust attacks, by going by their orders over the country, canvassing members of parliament for their votes, and in a thousand other ways which may be easily figured. And it might be unlawfully exerted in as many ways—in resisting the magistrates coming to disperse a meeting—in rescuing members apprehended by law—in putting members of parliament under duress or restraint, and so forth. All these acts, however criminal, and amounting even to murder and felony, would not amount to treason. Now, because physical strength might possibly be exerted in a way to infer treason, are you therefore to conclude that that mode of its exertion was necessarily in the view of the parties?

Just reverse the case, and see how you would construe an engagement to prevent innovation. Suppose a set of gentlemen in the country—whose politics are the reverse of those of the prisoner—were to enter into an association, and bind themselves by an oath, to support septennial parliaments and the elective franchise, as now established, by moral and physical strength. It would be a bold construction to call that treason. Yet it is precisely the construction employed by the public prosecutor in this case; for a man may compass the king's death or levy war against him in supporting septennial parliaments, as well as in endeavouring to obtain annual parliaments.

I shall call your attention to one or two instances of oaths administered every day, and see how the principle of construction contended for by the lord advocate would apply to them. You know, that, when a soldier is enlisted, he is attested by a magistrate, and an oath is administered, which is prescribed by the Mutiny act. It is in these terms: "I swear that I will bear true allegiance to our sovereign Lord King George, and that I will as in my duty bound, defend him in his person, crown, and dignity, against all his enemies; and that so long as I shall remain in his majesty's service, I will duly observe and obey his majesty's orders, and *the orders of the generals and officers set over me by his majesty.*"

Is that an obligation to obey an unlawful order of an officer? I apprehend it is not. You will not go nicely to work in discriminating between right and wrong where the duty of a common soldier is concerned; but where an

order he receives is plainly illegal, as to assassinate or murder a man, or resist a civil magistrate, is he bound to obey that order? No. The terms of his oath extend to *all* orders, but you will apply the maxim, *id tantum facere possumus quod de jure facere possumus*. In swearing to obey all orders, the oath intends lawful orders alone. You will recollect, there was a trial before the Court of Justiciary, in a case where a soldier had, by orders from his officer, resisted a magistrate. I speak of the case of Ferguson, in 1764. He was condemned by the Court, and it would not have availed him to plead, that the oath administered to him when enlisted, bound him to obey every order, whether lawful or unlawful.

I formerly mentioned to your lordships how the oath of abjuration imposed by government required to be construed. It binds the parties to exert all their endeavours to support the king's government and the protestant religion. What endeavours? why lawful endeavours surely, not by committing murder or felony. Construe this oath as you construe those oaths; let the general terms receive the same qualifications in both, and it is impossible to extract a treasonable obligation.

I have said perhaps too much on this point. Let me conclude with a few observations on the last clause: "I farther swear, that neither hopes, fears, rewards, or punishments, shall induce me to inform on, or give evidence against, any member or members, collectively or individually, for any act or expression done or made, in or out, in this or similar societies, under the punishment of death, to be inflicted on me by any member or members of such societies. So help me God."

Nobody can doubt that it was a misdemeanor to impose, or to undertake this obligation; but this is not the question at present. Your lordships have to judge, whether this is necessarily an obligation to commit treason. This society was composed chiefly of individuals in the lowest stations of life, ignorant and uninformed persons, who, in the course of their discussions, might have fallen into improper or seditious expressions. It was natural that the members of the society should impose an obligation not to reveal what was said, lest any of their number should be convicted of libel or sedition. But an obligation to conceal such imprudent expressions, or even not to disclose improper acts committed in the presence of a person, is not an obligation imposed on that person to be guilty of libel, or sedition, or any similar crime, far less is it an obligation upon him to be guilty of treason. It may be a misdemeanor, but it is not that crime which your lordships are now called upon, by the major proposition of this indictment, to try; and if that be the case, it is clear that the libel is not relevantly laid.

Take the oath in all its parts—apply to it the ordinary rules of interpretation—take the words with the greatest rigour, or the greatest latitude, and you will never extract that sense

which it is necessary to extract from them, before you can have a relevant charge under the statute.

The prosecutor is not satisfied with reciting the oath in his minor proposition, he gives a commentary upon it, and it remains to be considered, whether the commentary is a fair expression of the import of the oath; and, supposing that it is, whether the oath so construed amounts to a treasonable obligation. After reciting the oath, the libel proceeds thus: "Which oath did bind, or did purport to intend to bind, the persons taking the same to commit treason by effecting, by physical force, the subversion of the established government, laws, and constitution of this kingdom, and especially by obtaining annual parliaments and universal suffrage by unlawful and violent means." Is that a fair gloss upon the words of the oath? Do they signify what the prosecutor says? Or are they radically and essentially of a different signification? There is not one word in the oath of an obligation to effect any thing, or to subvert any thing, if by subversion you mean ought else than a lawful endeavour to alter an existing law. The oath binds the taker, "to persevere in his endeavours to obtain for all the people in Great Britain and Ireland, not disqualified by crimes or insanity, the elective franchise, at the age of twenty-one, with free and equal representation, and annual parliaments." Nothing is said here of the government, laws, and constitution of the kingdom; or of any laws, except those which relate to the duration of parliament, and the elective franchise. It binds the taker to subvert nothing by physical strength, not even the laws against universal suffrage and annual parliaments, and far less the established government, laws, and constitution in general. It contains no obligation to obtain annual parliaments and universal suffrage, or any thing else, by unlawful and violent means.

It binds the taker to support one of three things,—or, if you will, all the three,—by moral and physical strength; but this obligation must be qualified, as every such obligation is qualified, in ordinary speech; otherwise all human affairs would be thrown into confusion, and language would become the instrument of deception and error. If it be so qualified, the obligation is confessedly innocent.

It is not a gloss to substitute words of one import for words of a totally different import, and to change the meaning of a sentence by the interpolation of whole clauses which they do not contain. The subjects of this country would be in a dreadful situation indeed, if they were exposed to a capital conviction for the use of words; in construing which words the prosecutor might substitute and interpolate as he thought fit, until he found a meaning which suited his purpose, though totally different from the meaning which the words, as he himself recited them, naturally and properly bore.

I am afraid I fatigue your lordships, in going over grounds which were stated, if not much commented on, before. But I now come to another ground, to which I must particularly call your attention, being sensible, that the first time I had the honour of bringing it before you, it was imperfectly argued. After having given it more mature consideration, and weighed the authorities touching it, there is no one objection to this indictment on which the counsel on this side of the bar rest with more security and confidence. It is this,—that, *ex* the words of this oath import what the public prosecutor says they import, it will not make a relevant charge; for granting that the oath binds the taker to do all that the prosecutor alleges, I maintain it is not an obligation to commit treason.

Before entering on this objection, I suppose it will be conceded to me, without any argument, that, in an indictment under this statute, the prosecutor is bound to specify the treason to which he refers,—that he is bound to state it precisely, formally, and technically. If this were not the case, there is not a more ensnaring or detestable law in the criminal code, because almost any oath might be twisted into an unlawful obligation, and the prisoner would come to the bar ignorant of what he was accused, and unprepared to defend himself.

To illustrate this, suppose an indictment laid for administering an oath, binding the taker to commit felony; and, in that case, I beg leave to ask, whether the prosecutor would be required to specify the felony he had in view. There is a vast variety of felonies, some of them existing at common law, and others introduced by statute. Many of these are complicated, obscure, and undefined, depending on the construction of revenue laws, commercial regulations, and the mysteries of trades and professions; now, if the panel was not made aware of the felony alluded to in the indictment, it would often be impossible for him to conjecture in what the crime consisted which was laid to his charge. Thus, suppose a prisoner was indicted for administering an oath binding the taker to commit felony, because it bound him to carry away a certain quantity of corn from the place where it was deposited, and give it to a shipmaster. Here the felony in view might be theft; or it might be fraudulent bankruptcy; or it might be taking corn from a storehouse, where it was deposited for exportation, contrary to the statute;* or it might be holding correspondence with a person who had resided in France, contrary to the non-intercourse statutes.† It will not be contended, that the prosecutor might conceal into which of these felonies he meant to construe the oath, and, consequently, deprive the prisoner of all means of defending himself.

The case of treason is perfectly analogous. It is true, there are not so many treasons as felonies, but there are, in the law, at least ten different treasons, and the prisoner is left altogether in the dark to which of these the lord advocate alludes.

The statute bears, "That every person who shall, in any manner or form whatsoever, administer, or cause to be administered, or be aiding or assisting at the administering, of any oath or engagement, purporting or intending to bind the person, taking the same to commit any treason," &c. The legislature here puts the term disjunctively. It does not say treason in general, but *any treason*; clearly intending, therefore, that the prosecutor should specify the particular treason which he asserts the oath bound the taker to commit. Hence I infer, that nothing but a technical description of the treason referred to, will suffice to make a libel under the statute relevant. It is a maxim in *criminalibus non licet vagari*, and there never was a case in which the maxim was more applicable than the present.

Let us consider the treasons actually existing in the law, and try to discover to which of them it is that the prosecutor alludes in the minor proposition of this indictment. I believe you will find the attempt altogether fruitless.

The first, mentioned by Foster, Blackstone, and other writers, is compassing the king's death. It is not laid, that this oath bound to compass the king's death, nor even to commit any of the common and usual overt acts which are considered as evidence of compassing the king's death—for example, to murder the king, or to put him in durance. I shall have occasion, by and by, to direct your attention to the case, that an overt act had been charged, that you may consider whether that would have rendered the indictment relevant. At present I am asking, whether the prosecutor asserts that the oath bound the taker to commit that species of treason?—Unquestionably he does not.

The second treason is, to violate the queen, or the king's eldest daughter. It will not be pretended that this treason was in view.

The third is to levy war against the king in his realm. The prosecutor does not assert that that obligation was imposed, as will be evident from the following considerations. To constitute this treason two things are necessary; 1st, That war shall be levied: 2nd, That it shall be levied against the king; or, what is held equivalent, that it shall be levied for a public purpose, as destroying all enclosures and so forth.

Was this an oath to levy war? The old writers held, that war could not be levied, unless the persons engaged to levy it were arrayed *modo guerrino*; unless they were assembled with "all the pomp and circumstance of war." The law is so laid down by Sir Matthew Hale. I am aware, there has been a relaxation in the law since that period; and

* 11 Geo: II, c. 22.

† 33 Geo: III, c. 27; 34 Geo: III, c. 9.

that it is not necessary that the persons shall be so armed: but there must be a rising or insurrection of a multitude; and a few individuals assembled, armed or unarmed, is not levying war.

Sir Michael Foster corrects the old doctrine as laid down by sir Matthew Hale, page 208, first folio edition: "Lord Chief Justice Hale, speaking of such unlawful assemblies as may amount to a levying of war within the 25th Edward 3rd, taketh a difference between those insurrections which have carried the appearance of an army formed under leaders, and provided with military weapons, and with drums, colours, &c. and those other disorderly tumultuous assemblies which have been drawn together, and conducted to purposes manifestly unlawful, but without any of the ordinary show and apparatus of war before mentioned.

"I do not think any great stress can be laid on that distinction. It is true, that in case of levying war, the indictments generally charge, that the defendants were armed and arrayed in a warlike manner; and, where the case would admit of it, the other circumstances of swords, guns, drums, colours, &c. have been added. But I think the merits of the case have never turned singly on any of these circumstances."

"In the cases of *Damaree* and *Purchase*, which are the last printed cases that have come in judgment on the point of constructive levying war, there was nothing given in evidence of the usual pageantry of war, no military weapons, no banners or drums, nor any regular consultation previous to the rising. And yet the want of those circumstances weighed nothing with the Court, though the prisoner's counsel insisted much on that matter. The number of the insurgents supplied the want of military weapons; and they were provided with axes, crowes, and other tools of the like nature, proper for the mischief they intended to effect.

——Furor arma ministrat.

"Sect. 1. The true criterion therefore in all these cases is, *quo animo* did the parties assemble. For if the assembly be upon some private quarrel, or to take revenge of particular persons, the statute of treasons hath already determined that point in favour of the subject."

And afterwards: "2ndly, The words of the first clause descriptive of the offence, 'if any man ride armed openly, or secretly, with men of arms,' did in the language in those times mean nothing less than the assembling bodies of men, friends, tenants, or dependants, armed and arrayed in a warlike manner, in order to effect some purpose or other by dint of numbers and superior strength. And yet those assemblies so armed and arrayed, if drawn together for purposes of a private nature, were not deemed treasonable."

Again, "Sect. II. Upon the same princi-

ple, and within the reason and equity of the statute, risings to maintain a private claim of right, or to destroy particular inclosures," and so forth.

"And upon the same principle, and within the same equity of the statute, I think it was very rightly held by five of the judges, that a rising of the weavers in and about London to destroy all engine-loom, &c."

So he goes on to the end of the chapter, stating, that though warlike apparatus is not necessary, there must be a rising in order that the multitude may compensate for the want of regular array.

The second requisite is, that the insurrection shall take place in order to accomplish a public object. It is no levying of war, if one nobleman rise against another, to burn his house or destroy his inclosures, for these are private, not public objects.

The case of lord George Gordon was referred to when we were last here. There, the question was not whether it was necessary there should be an insurrection to constitute the levying of war, but whether an insurrection, which had confessedly taken place, was for a public purpose. It was not upon the first, but upon the second requisite, that the doubt arose. It was contended, that the purpose being to compel parliament to repeal a statute, was not a public purpose; and lord Mansfield, in an able speech, says,—"The prisoner at the bar is indicted for that species of high treason which is called levying war against the king; and, therefore, it is necessary you should first be informed what is in law levying war against the king, so as to constitute the crime of high treason, within the statute of Edward 3rd, and, perhaps, according to the legal signification of the term, before that statute. There are two kinds of levying war:—one against the person of the king; to imprison, to dethrone, or to kill him; or to make him change measures, or remove counsellors;—the other, which is said to be levied against the majesty of the king, or in other words, against him in his regal capacity; *as when a multitude rise and assemble to attain by force and violence, any object of a general public nature; that is levying war against the majesty of the king*; and most reasonably so held, because it tends to dissolve all the bonds of society, to destroy property, and to overturn government; and, by force of arms, to restrain the king from reigning according to law.

"Though the form of an indictment for this species of treason mentions drums, trumpets, arms, swords, fifes, and guns, yet none of these circumstances are essential. The question always is, whether the intent is, by force and violence, to attain an object of a general and public nature, by any instruments, or by dint of their numbers. Whoever incites, advises, encourages, or is any way aiding to such a multitude so assembled with such intent, though he does not personally appear among them, or with his own hands commit any violence what-

soever, yet he is equally a principal with those who act, and guilty of high treason."*

If you will go on to the end of the learned judge's speech, you will find the question was, whether the purpose of the insurrection was a public one, and consequently, whether the war levied was against the king or not.

But there is nothing in the oath here, even according to the prosecutor's interpretation, which binds the taker to levy war at all—to rise in arms—or to assemble tumultuously for the purpose of obtaining any object, either public or private.

There are other four treasons—adhering to the king's enemies—counterfeiting the great and privy seals—counterfeiting the coin—and slaying the chancellor and other judges in the execution of their office. These may be passed over in silence, for it will not be pretended that the oath alludes to them. Neither can it allude to the treasons relative to Papists—to the debasement of the coin—or the obstruction of the Protestant succession.

Then there is a treason which was introduced by the 36th of George 3rd. By that act it is made treason to conspire to levy war for certain purposes. The statute says, that "if any person or persons whatsoever, shall, within the realm or without, compass, imagine, invent, devise, or intend death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint, of the person of the same our sovereign lord the king, his heirs and successors; or to deprive or depose him or them from the style, honour, or kingly name of the imperial crown of this realm, or of any other of his majesty's dominions or countries; or to levy war against his majesty, his heirs and successors, within this realm, in order, by force or constraint, to compel him or them to change his or their measures or counsels, or in order to put any force or constraint upon, or intimidate or overawe both Houses, or either House of Parliament; or to move or stir any foreigner or stranger with force to invade this realm, or any other of his majesty's dominions or countries, under the obedience of his majesty, his heirs and successors? and such compassings, imaginations, inventions, devices, or intentions, or any of them, shall express, utter, or declare, by publishing any printing or writing, or by any overt act or deed; being legally convicted thereof, upon the oaths of two lawful and credible witnesses, upon trial or otherwise convicted or attainted by due course of law, then every such person or persons so, as aforesaid, offending, shall be deemed, declared, and adjudged to be a traitor and traitors, and shall suffer pains of death, and also lose and forfeit as in cases of high treason."

We may lay out of view what is enacted as to devices directed against the king's person, or attempts to depose him. The only part of the statute to which the prosecutor can allude,

is that which relates to a compulsory change of the king's measures; or to the intimidation of the Houses of Parliament. But your lordships will observe, that it is not declared treason by the statute, to alter the king's counsels by compulsion, or to intimidate the parliament, but to *levy war* for either of these purposes. Now this indictment does not set forth that the oath libelled on contained an obligation to *levy war* for these or for any other purposes.

But the lord advocate seemed to hint, on a former occasion, that it was sufficient to render an indictment under the statute libelled on relevant, if he set forth that the oath administered contained an obligation to perform an act, which the jury should hold an overt act of treason, although the indictment did not specify what the treason was of which it was an overt act. For example, he said that the indictment here set forth, that the oath bound the taker to subvert the government by physical strength, and, in particular, to obtain annual parliaments and universal suffrage, by unlawful means; and those acts being overt acts of treason, it followed, that the charge in the indictment was accurately laid. But I ask your lordships, if this doctrine be well founded? Is it sufficient, under the statute, to libel that an oath was administered, binding the party—to do—what?—Not to commit treason, but—to do an act which the jury shall discover to be an overt act of treason. An overt act of treason is that which convinces a jury that treason has been committed; but it is no more treason in the eye of law, than the evidence of a crime is the crime itself. If the charge of an overt act of treason were equivalent to the specific charge of treason itself, then, instead of the ten or twelve treasons which I have enumerated, there would be thousands of treasons in the law, because there are a thousand acts which may amount to evidence that the crime was perpetrated. This would be to let in the whole host of constructive treasons, which were abolished by the statute of Edward 3rd. No oath could then be administered, which might not, *per se*, furnish a relevant charge under the 52nd of the king; for the prosecutor would be at liberty to say, that although no particular treason was specified in the libel, the jury would discover that an overt act of some treason or another, fell under the obligation contained in it. This would be replacing the law in exactly the same situation in which it was in England, previous to the statute of Edward 3rd: and in which it was in Scotland, previous to the union.

What was the defect in the treason law of those periods? It was that the prosecutor charged the accused with meditating or performing an act, such as subverting the constitution, altering fundamental laws, and so forth, which he thought fit to denominate treason; and thus, almost any act might be construed into treason. These constructive treasons were abolished, and a strict and technical

* 31 How. St. Tr. 644, 645.

definition of the crime substituted in their room; and, unless a person is accused of a treason so defined, the accusation is good for nothing. The prosecutor must specify overt acts, but it will not do to specify them alone; he must further say what the particular treason is which he means to prove by them. In like manner; in this case, the prosecutor must say not merely that the oath libelled on bound the taker to commit an overt act of treason, but what the particular treason was which it bound him to commit. If it is not a relevant charge of treason to assert that a man conspired to subvert the constitution by physical force, neither can it be a relevant charge under this statute that he administered an oath binding the taker to subvert the constitution by physical force. The person who administered the oath cannot be dealt with more harshly than the taker himself. If constructive treasons are abolished as to the one, they must be abolished as to the other also. The law must be consistent with itself.

I need scarcely refer your lordships to historical illustration in support of what I have said on the law of treason. You will remember that, during the feeble and abject government of Richard 2nd, certain questions were put to the judges, upon which they delivered answers. One of them was this. A statute had been made which had been supposed to be a subversion of the fundamental law of the kingdom, and an encroachment on the royal power; and a question was put, by command of the king, "what punishment they deserved that compelled the king to the making of that statute? Whereunto the judges gave answer, that they should suffer as traitors." There were other eight answers that do not bear on the present question. Nobody will deny, that to compel the king to consent to a statute, may be an overt act of treason. To put him under constraint, is a common overt act of treason. But the judges, without regard to the distinction which I have adverted to, and confounding what may or may not be an act of treason according to circumstances; in other words, what may or may not be evidence of treason; with the crime itself, they pronounced that the persons who compelled the king to make an improper statute were guilty of treason. Now I will read what sir Matthew Hale (vol. i, p. 84) says, with regard to the answer so given by those judges: "The king called together the two chief justices, and divers others of the judges, and propounded divers questions touching the proceeding in that parliament, and the obtaining of that commission; and they gave many liberal answers, and among the rest, 'Quidem possum mereretur, qui compulerant sive arctarunt regem ad consentiendum confectioni dictorum statuti, ordinationis, et commissionis? Ad quam questionem unanimiter responderunt, quod sunt, ut proditores, merito puniendi. Item qualiter sunt illi puniendi, qui impederunt regem, quo minus posset exercere quae ad regalia et prerogati-

vam suam pertinerant? Unanimiter etiam responderunt, quod sunt, ut proditores, etiam puniendi,' with divers other questions, and answers to the like purpose." That is the very answer I read from the State Trials. You see what he says, "This extravagant as well as extrajudicial declaration of treason, by these judges, gave presently an universal offence to the kingdom; for presently it bred a great insecurity to all persons: and in the next parliament *crastino purificationis* 11th R. 2nd, there were divers appeals of treasons, by certain lords appellors, wherein many were convict of high treason, under general words of *encroaching royal power, subverting the realm, &c.*: and among the rest, those very judges that thus liberally and arbitrarily expounded treason in answer to the king's questions, were, for that very cause, adjudged guilty of high treason, and had judgment to be hanged, drawn, and quartered, though the execution was spared; and they, having led the way, by an arbitrary construction of treason not within the statute, they fell under the same fate by the like arbitrary construction of the crime of treason." And he adds again,

"Now, although the crime of high treason is the greatest crime against faith, duty, and human society, and brings with it the greatest and most fatal dangers to the government, peace, and happiness of a kingdom or state, and therefore is deservedly branded with the highest ignominy, and subjected to the greatest penalties that the law can inflict; yet, by these instances, and more of this kind that might be given; it appears, 1. How necessary it was, that there should be some fixed and settled boundary for this great crime of treason, and of what great importance the statute of 25th E. 3rd was, in order to that end. 2. How dangerous it is to depart from the letter of that statute, and to multiply and enhance crimes into treason by ambiguous and general words, as *encroaching of royal power, subverting of fundamental laws*, and the like; and 3. How dangerous it is, by construction and analogy, to make treasons; where the letter of the law has not done it; for such a method admits of no limits or bounds, but runs as far as the wit and invention of accusers, and the odiousness and detestation of persons accused will carry men."

The venerable author here declares, that all accusations of this kind, such as encroaching on the royal power, or subverting the fundamental laws of the realm, are too vague as charges of treason; and that the answer which those judges gave is worthy of the highest reprobation, and was given in opposition to the statute of Edward 3rd. He never speaks upon the subject, throughout the whole course of his work, without animadverting, in terms equally severe, on the conduct of those judges. At page 266, he says, that "although the statutes of Richard are repealed as to the new treasons which they introduced, yet still they are of force and efficacy to the damning of those extravagant opinions and declarations." Now I

entreat your lordships to turn to the present indictment, and see what it is that the public prosecutor calls upon you to declare to be treason in this case. One would suppose he had purposely used the very terms which sir Matthew Hale has branded with his stigma. "Which oath, or engagement, or obligation, to the foregoing purport, did bind, or did purport or intend to bind the persons taking the same, to commit treason, by effecting by physical force, the subversion of the established government, laws, and constitution of this kingdom."

Are you not here called upon to declare, that subverting the realm, or the fundamental laws of the realm, is treason? Are you not called upon to enhance an act into treason by ambiguous and general words? When his lordship requires you to find this indictment relevant, he requires you to make the very same answer which the English judges did in the reign of Richard 2nd, and which sir Matthew Hale so strongly reprobates—an answer, on account of which one of those unhappy judges was dragged to the gibbet, and all of them held up to the execration of posterity.

I may illustrate this proposition in another way more familiar to your lordships, by referring to our own, instead of the English law. Mr. Hume expresses himself in the following words:—"I have said in the second place that a libel is not good, unless it give such an account of the criminal deed as may distinguish this particular charge from all other instances of the same sort of crime, and thus bring the panel to the bar, sufficiently informed of that whereof he is accused; otherwise the purpose would not be fulfilled, which the law entertains, in ordering the panel to be served with a copy of his libel, and allowing him so many days to make preparation for his defence. In confirmation of this rule, M'Kenzie has rightly appealed to that statute respecting the crime of forestalling, which allows an offender in this sort to be indicted, generally, as known and reputed to be a common forestaller, without any more special detail of his transgression; thus plainly implying, that such a course of accusation is contrary to the tenor of our common law, and is justifiable only under the authority of a positive enactment. It is certain, accordingly, with respect to any article of dittay, which is stated quite at large, without any reasonable specification of the time, place, or manner of the thing which is alleged to have been done, that the panel cannot be put on his defence against it."

Now I should like to know what species of treason—in the words of Mr. Hume, "what sort of the crime," the lord advocate had in view, under the description of effecting, by physical force, the subversion of the established government.

To obtain annual parliaments and universal suffrage by violent and unlawful means, may

be overt acts of compassing the king's death, or of levying war, or of conspiring to levy war to obtain an alteration of the law. If the public prosecutor may have in view three different treasons, distinct from each other, how is it possible, according to Mr. Hume, that this can be a relevant indictment, when it does not specify which of them he had in view? This argument, you will observe, is distinct from the other. Formerly I argued, that to libel an overt act of treason, is not to libel treason; now I contend, in addition to that plea, that to libel treason is insufficient, unless the sort or species of the treason is also laid. And whatever holds with regard to a libel for treason, necessarily holds with regard to a libel for administering an oath binding to commit treason.

But there is one consideration more, to shew you the extreme danger of admitting charges of constructive treason; and it is this, that the facts here represented as overt acts of treason, do not in reality amount to treason, or afford any evidence of the existence of treason. In truth, the law, the constitution, and the government, may be subverted by violent means, and yet no treason be committed. It is no matter that the case is not very probable; it is quite sufficient for my present purpose, that it is merely possible. Suppose the case, that an individual robs the Bank, and bribes parliament to make the government despotic, where is the lawyer who will affirm this to be treason under the 25th Edward 3rd? Suppose that an individual compels a judge, by violence, to grant criminal warrants for arresting illegally certain members of parliament, in consequence of which they are prevented from voting against universal suffrage and annual parliaments. This is not levying war to put constraint upon parliament, under the 36th of the king; for the act of an unarmed individual, as we shall suppose him, cannot be the levying of war. Yet here the constitution is overturned by violent and unlawful means, without the commission of treason. These are examples to show the danger of departing from the salutary principle of the law of England, that where treason is charged, it shall be accurately specified. If you depart from that principle, and find the present indictment relevant, you overturn the whole law of treason—you let in all the constructive treason which existed before the 25th of Edward the 3rd and the security which the subjects of this kingdom derived from that excellent statute will be destroyed.

One circumstance I had nearly forgot to mention. It is only another instance of the extreme inaccuracy with which this indictment is framed. It was pointed out the last time we were before your lordships; but the public prosecutor has not corrected the error. The terms of the oath, as he has stated it, in the third clause, are, "and that I will support the same to the utmost of my power, either by moral or physical strength, as the case may require;" and yet, when he comes to mention the

import of the oath, in the subsequent part of the indictment, he says the obligation was, to use physical force. Now, you see he does not do this carelessly or unintentionally; for he repeats it after his attention had been expressly called to it by the prisoner and by your lordships; and his doing so is just saying he thinks himself entitled to substitute one word for another, although they are of an import materially different. If he is to be indulged with that liberty, it is in vain to talk of construction at all, for he may make any oath signify what he pleases. Strength and force are undoubtedly two different things, as was well illustrated by Mr. Clerk on a former occasion.*

The grounds then, I go upon, are these. *First*, I maintain that this is an accusation of treason, which cannot be tried in the present form. *Secondly*, That the obligation contained in this oath, with the exception of a misdemeanor, does not infer any thing criminal; and that even if it did, it does not necessarily infer any thing treasonable. *Thirdly*, That the meaning which the prosecutor extracts from the oath, is not the meaning that, by any fair construction, it can bear. And *Lastly*, Supposing it did bear his meaning, that the acts, which he says amount to treason, do not amount to it. The indictment is altogether erroneous; the obligation which it affirms the oath imposed, is not affirmed to be a specific treason properly defined; and, in fact, it may be no treason at all.

There is another objection to this indictment of a nature a little more subtle, and which rests on a principle of the law of England applicable to this statute. If you give leave to one of my brethren to address you on the subject, that objection may be stated to you with more effect. On a former day, your lordships stated that it was your rule to allow several counsel for the panel to speak in succession at the commencement of the argument on the relevancy; and it is because I am not so well qualified to do justice to this point, that I would rather devolve it on another, who is more conversant in English law. The objection rests on two or three propositions. It is well established in common law, that felony merges in treason; and when, from the evidence in a trial on a charge of felony, treason appears to have been committed, the trial cannot proceed for the felony. Now here, the conclusion of the prosecutor is, that the oath was *traitorously* administered; and the overt act refers to an oath which would in itself, if administered or taken, amount, *according to the prosecutor*, to the crime of high treason. It is no answer to say, that the statute here enacts that an oath binding to commit treason should be held to be felony; for this reason, that it is another principle of the law, that where the legislature declares a certain act to be felony, it shall be held not to have been treason before the statute. There might be many oaths

binding to commit treason which oaths might be taken without the taker actually committing treason by so swearing. An oath to levy war for destroying stocking-frames, may not be treason, whereas other oaths binding to commit a treason, in the very act of administration or of taking, form treason of themselves. The legislature might have in view only the species of oaths, which binding to commit treason, do not, in the administering of them, infer the commission of treason. Another rule is, that where there are two statutes relative to any matter, and the one does not repeal the other, they must be interpreted so that the one may be consistent with the other. Statutes, therefore, as to treason, which have passed since the statute of Edward 3rd, must be construed, if possible, so as to be consistent with the latter. This limits, therefore, the statute of the 52nd of the king, to those oaths only which are administered without the commission of treason at the time of administration; and, in common sense, it could not otherwise be interpreted without endangering the whole fabric of the constitution. What would be the consequence were the case otherwise? A person administering an oath, the very administration of which is treasonable, might be protected from a prosecution for treason, by an indictment being served upon him under the statute. It is plain, therefore, that this statute, in so far as treason is concerned, can only apply to oaths binding to that species of treason in which the taking of the oath is not of itself treason. These principles will be illustrated more at length to you by Mr. Grant, and supported by authorities.

Upon all these grounds taken together, we submit that this indictment is as objectionable as the former, and that the prisoner, therefore, should be dismissed from the bar.

Lord Justice Clerk.—Before Mr. Clerk is precluded from making any observations on the subject, I think it right to direct his attention to a circumstance which has occurred to the Court, as deserving the consideration of both parties. In reference to all the four particular charges, as to the administration of this alleged unlawful oath, this indictment concludes in these words:—"The said oath, or engagement, or obligation to the said purport, binding the persons taking the same to commit treason, as said is." These are not the words used in the conclusion of that part of the indictment which follows the recital of the oath: "which oath, or engagement, or obligation to the foregoing purport, did bind, or did purport or intend to bind, the persons taking the same to commit treason, by effecting, by physical force, the subversion of the established government, laws, and constitution of this kingdom, and especially by obtaining annual parliaments and universal suffrage, by unlawful and violent means." In the four particular instances of the administration of the oath specified in the indictment, neither "purporting," nor "in-

* See the preceding case.

tending," are mentioned, which are the words of the statute.

I think it right to bring this under the observation of the bar. The objection was already in your lordship's view.

Mr. Grant.—If in a case of this extreme anxiety, my attention could be directed to any thing personal to myself, I should certainly feel under the greatest embarrassment, in addressing your lordships, after the speech which you have just heard. I cannot, however, on the present occasion, feel the least concern for any thing that belongs to myself. Not only is this case one of great anxiety, as it involves the lives of the unfortunate men who are to be tried for the crimes which are charged in this indictment; but I regard it as one of the greatest importance in point of law. It is, so far as I know, the first case in which the Court of Justiciary in Scotland has been called upon to decide on a question of treason, according to the principles of the law of England regarding treason, which were imported (if I may use the expression) into this country immediately after the act of Union between England and Scotland.

I am bound to believe that your lordships are conversant with the English authorities upon this subject, because you are bound to administer the law according to these authorities; and, therefore, when I refer to them, and when I address to your lordships the same sort of argument which I should address to the courts elsewhere, I am aware, that not only no apology is necessary for doing so, but that it is my bounden duty so to do, because these are authorities in the law of Scotland. When I say this, I do not mean to assert so unreasonable a proposition as that it can be expected from your lordships that you should be as intimately acquainted with the phraseology of this part of the law, and with the cases by which it is governed, as you are with the phraseology and established practice of the law of Scotland, as it applies to the cases which generally come before you.

Therefore, when I request your attention to the argument which it is my duty to state to you, I am aware that I demand of your lordships an attention to a subject with which you cannot be so thoroughly familiar as you are with any other branch of the law which you administer; and I am also but too sensible, that I am not capable of either explaining or supporting my argument in the manner which the deep importance of the case demands.

I am bound to perform my duty in the best manner I can; but, I confess, I feel an uncommon degree of anxiety on the subject, because, having considered it with the utmost attention of which I am capable, I am satisfied, in my own mind, that I cannot fail in establishing the propositions which I have to announce, except from a want of that talent for explanation and exposition which the subject requires.

I have to lay down certain propositions; in supporting which, I hope that though I shall have occasion to refer to several authorities, I shall not have occasion to quote them at such length as to occupy very much of your time; and I am the more disposed not to encroach upon it, as your attention must be exhausted from what you have heard, and as I have the disadvantage of addressing you after so able and luminous a speech as that which Mr. Cranstoun has just delivered.

I am first to maintain, what I think will be conceded, *that, whether this oath do or do not bind to the commission of treason, is a question of English law.*

I shall next state to your lordships, and I think I shall satisfactorily prove to you, *that it is a maxim, in the law of England, that an act of high treason cannot be tried as a felony.*

I shall then state to your lordships, *that this applies still more strongly to cases tried in Scotland*—for, whereas, in England, a case amounting to high treason upon the evidence, cannot be tried as a felony, and no judgment can be given upon such a case, but the person accused is entitled to be acquitted upon such a trial, although the form of trial in cases of felony does not differ so essentially from that in cases of high treason as it does in Scotland—how much more strongly must this apply in Scotland, where the whole form of your procedure in cases of treason is distinguished by a positive statute, from your forms in trials for other crimes. By a positive statute, your lordships, sitting as you are now, cannot try an offence which amounts, according to the statement of the public prosecutor, to high treason, by the machinery which you are now employing—you cannot try it on the indictment of the lord advocate. You can try it only on the indictment of a grand jury, and by that course and form of proceeding which would be pursued by the court of King's-bench in England.

Then, I shall submit, that this is your situation at present, *unless it can be shewn that there is any thing in this act of the 52nd of the King, which has abrogated that rule of the common law, and repealed that statute; and, I think, I shall satisfy your lordships, that there is nothing in this act of Parliament that does so abrogate the common law, or repeal that statute.* There is nothing in this act from which we can infer that it was the intention of the legislature to do either: on the contrary, it is impossible to infer from this act any such intention without the greatest absurdity; and the greatest injustice and wrong would be introduced by so doing.

If I make out these propositions, I shall succeed in shewing to your lordships that this is not a relevant indictment; and that it is not a relevant indictment, not only because it does not sufficiently specify and charge any treason, but because the public prosecutor is in this dilemma, that, if it does, he cannot try the offence in this shape. I desire him to take his

choice of the two propositions. He cannot maintain both. Either this which the oath bound to do is charged as treason or not—it is either a relevant charge as such, or not. It will not be said it is relevant to charge it as treason without words, which in their ordinary meaning amount to a description of some treason. Then I say, if they do not amount to a description of a treason, the libel is irrelevant, upon the grounds which my friend Mr. Cranstoun has stated. If, upon the other hand, the prosecutor says, that the specific treason is here sufficiently alleged and set forth, I desire him to say, by what law he can try this offence in this Court by this mode of proceeding.

Without going over again the argument of my learned friend, which I should only weaken by attempting to resume it, I must, in supporting my own views of the case for the sake of the argument, suppose that he has failed in his proposition. My intention is, to direct you to the other branch of the dilemma. If this indictment does imply a charge of treason, although the specific words which we say ought to be in the indictment are not used; then we ask, What sort of treason or overt act of treason do they charge? It is said, that this oath was administered to a great number of persons, to many hundreds or thousands—that it was traitorously administered to them—and bound these many hundreds of persons to commit treason, “by effecting, by physical force, the subversion of the established government, laws, and constitution of this kingdom; and especially by obtaining annual parliaments and universal suffrage, by unlawful and violent means.” If this means any treason whatever, it can only mean *the compassing and imagining* the king’s death; or the treason mentioned in the 36th of the king—levying war, in order to compel his majesty to change his measures, or to constrain one or both houses of parliament. Now *the compassing and imagining* to levy this war, is, by the act of the 36th of the king, declared to be a treason. The administering this oath, then, to give the prosecutor his own way, would be an overt act of such compassing, or of compassing the king’s death. If so, it is an overt act of treason, and cannot be tried as a felony. (I would request of you, my lords, if I fail in any part of the argument which I am maintaining to make myself intelligible, to intimate to me when I do so; for I wish to take up as little time, and to render myself as intelligible as possible.) I say it is a known rule of the law of England, that felony merges in treason—that treason drowns felony. If a person is accused of felony, and, upon the evidence, it comes out to be an overt act of treason, he must be acquitted upon that trial. He cannot, by the law of England, be convicted upon an indictment of felony, where the crime amounts to an overt act of treason.

This is a maxim in the law of England, of so ancient a date, that it is difficult to find it in the more modern authors, in other than gene-

ral terms, because it is a proposition which nobody has ever ventured to dispute. If we turn to the Year-Book 31 Hen. 6th. we find that the greater offence drowns the less—And this is a general maxim. For instance, trespass is extinct in felony. Suppose goods are taken, and an action of trespass is brought for them, if, upon the evidence, it appears that the crime amounts to felony, the prisoner must be acquitted of the trespass, because the felony drowns the trespass—the trespass merges in the felony; and he must be acquitted of the trespass and re-indicted for the felony. The Year-Book 31 Hen. 6th. 15,* says, “It was agreed that in case of a robbery, the person robbed shall not have an action of trespass for the goods, for the trespass is extinct in the felony, *et omne majus trahit ad se minus.*” Where an action of trespass was brought by a husband for beating his wife, whereby she died; the action was found not to lie, because the crime was a felony.† The policy of the law is stated by Mr. Justice Jones in *Dawkes v. Coveleigh*.‡ “If the party robbed may have his election, either to indict the felon, or to have his action of trespass; this would prove very dangerous.” And the Chief Justice Roll gives the same reason. Many felonies would thus be smothered. By the law of England, your lordships know, these are popular actions. Where there are popular actions, persons, from many motives, would indict for the lower offence. But the law says, No. If the evidence shew that a greater sort of offence has been committed than that which is charged, the person tried must be acquitted on the indictment for the lesser offence, and he must be re-tried for the greater offence, and the prosecutor shall not have power to choose the lower, so as to dispense with a trial for the higher.

You are aware, my lords, that treason, by the law of England, is not confined to what we commonly call treason. It consists of two sorts, high and petit treason. Petit treason is the murder of a husband by his wife, or a master by his servant. It has been decided, where, upon an indictment of murder, it came out to be a case of petit treason, that the person must be acquitted on that indictment, because the felony is merged in the petit treason. If this is the case as to petit treason, still more must it be so as to high treason.

I am aware that Mr. Justice Foster (as to whose opinion I shall speak presently) doubts the authority of the case in which this was said to be determined; and, he says, that, because petit treason and murder are of the same nature, and petit treason is considered in law only as an aggravated species of murder, the murder shall not be merged in the petit treason. But what does he say he would do himself? Does he say he would direct a ver-

* Quoted in Bro. Ab. 145, voce Trespass.

† Huggins’ Case, 4 Jac. 1; 2 Ro. Ab. 557,

‡ Sty. 247.

dict of guilty of murder on such indictment? He says, that he would not direct an acquittal for fear the acquittal of the petit treason might be pleaded against a new indictment for murder; but that he would discharge the jury of the indictment altogether, and would direct a re-indictment for the petit treason; for that a prisoner is entitled, when treason is charged against him, to the forms and privileges of a treason trial, his peremptory challenges, two witnesses, &c. &c. And, therefore, says the judge, I would discharge this indictment, and I would again direct an indictment for the petit treason,

There is not a case in the books, of a verdict having been pronounced for murder when the facts amounted to petit treason. I have not found such a case alluded to; but I find the above opinion of this judge as to the case of petit treason, which is only an aggravated species of homicide. When other authorities say, generally, a person charged with the lower crime should be acquitted, that judge says, he would, in the case of petit treason, discharge the jury. He does not say he would desire him to be acquitted for the reason I have stated; but he says, though the two crimes are the same in substance, petit treason being an aggravated species of murder, he would not put the culprit to his trial where the prosecutor ought to have indicted for petit treason, and the prisoner is entitled to that mode of trial which is appointed for every species of treason.

All these arguments apply more strongly to high treason than to petit treason. It is true, in high treason, the penalty is greater—the forfeitures are different. But so they are in petit treason.—In the case of a woman, the judgment in petit treason was, that she should be burned to death. But the principle is, that on account of the odiousness of the crime of high treason, the attention of government to put it down is more excited, than with regard to other crimes: and, in proportion as this operates on one side to increase the penalty, the law watches over the prisoner on the other, and gives him peculiar privileges in his trial.—And the judges hold themselves bound not to balance between the two classes of cases—they hold themselves bound to execute the law as it stands; and they think that the law has judged wisely, and that it is a great advantage to the prisoner that he should be tried according to the mode of trial appointed by the law, though it be attended with the disadvantage of greater punishment in the event of his guilt being established.

On this subject, I think, I need do nothing more than shortly cite some authorities to your lordships. First, I shall cite a case where there was a trial for murder; and the circumstances having amounted to petit treason, the prisoner was acquitted, and a trial was ordered for the petit treason. That case is mentioned in the State Trials, vol. 6th, in the case of Coke and Woodburne. It was a case tried

in 1712, and cited by the prisoner Coke in his defence.* It was said to have occurred at the assizes; and on a conference with all the judges, an acquittal was directed, and the culprit was re-indicted for petit treason, convicted, and executed. I need go no further to shew, that if the facts had amounted on an indictment of murder, or other felony, not to petit treason, but to high treason, an acquittal must have been directed. In a case in Dyer's Reports, page 50, *a.* a general pardon having been granted, of all treasons and felonies, with the exception of murder, it was found, that petit treason was not within the exception, but within the pardon.

I observe that the counsel for the Crown, in the case of Coke and Woodburne, three of them, very learned persons, admitted that the case cited, as decided in 1712, was good law. They admitted, that the killing a husband or a master could not be tried on an indictment of murder, because a different and distinct offence. The Chief Justice did not deny, but seemed to admit this as good law. Whether that case had been so decided, was a question of fact; and you will observe that this case of Coke and Woodburne, in which it was cited, was tried in 1721, between eight and nine years after the opinions of all the judges in the case cited, were supposed to have been given; so that it is not easily conceivable, that if there had been any error in point of fact, it would not have been noticed. But, having mentioned this case, it is proper to take notice of a passage in Mr. Justice Foster's second discourse on Crown Law, page 326. It is as follows:

"While the case of the King against Swan, reported before, was depending, and before the second bill was preferred, a question was made, whether Swan could be convicted on the indictment for murder, if it should come out in evidence that he was servant to the deceased at the time the fact was contrived or committed? and, consequently, that this offence was petit treason.

"There is a case cited (6 State Tr. 224.), in the printed trial of Coke and Woodburne which (*if such case there ever was*) hath, as far as the authority of it goeth, determined that question. At the summer assizes at Dorchester, 1712, a woman was indicted before Mr. Justice Eyre, for the murder of another woman; upon evidence it appeared, that the person murdered was her mistress, which made the crime petit treason. The Judge directed this matter to be specially found; and, upon conference with all the Judges, it was holden, she ought to be acquitted upon this indictment, as she accordingly was, and was afterwards indicted for petit treason, and convicted and executed. This case is not to be found in any report printed or MS. that I have met with, or heard of; nor have I, upon a strict inquiry, met with any footsteps of such case, among the minutes of proceedings,

* 16 How. St. Tr. 84.

on the Crown side, in the county where the case is supposed to have arisen, though the minutes, from 1708 to 1722, have been carefully searched. For these reasons, and what is suggested in the marginal note, I conclude that no such case ever existed. Lord Chief Justice Hale is very full and express on the other side of the question: that a person who is guilty of petit treason may be indicted of murder, for it is a species of murder; and a pardon of murder pardoneth petit treason."

I quote this passage for the purpose of shewing, that the learned Judge's only difficulty was, that petit treason was a species of murder; but he never questioned that, generally speaking, any minor offence should merge in the greater one of treason.

Then he goes on to say, "But though I am satisfied, that the law considereth petit treason and murder as one offence, differing only in circumstance and degree; yet, whether it may be advisable to proceed, upon an indictment for murder, against a person plainly appearing to be guilty of petit treason, is a matter that deserveth great consideration, and probably determined the attorney-general to prefer a fresh bill for petit treason in Swan's * case; for, though the offences are, to most purposes, considered as substantially the same, yet, as there is some difference between them with regard to the judgment that is to be pronounced upon a conviction, and a very material one with regard to the trial, a person indicted for petit treason being entitled to a peremptory challenge of 35, I think, if the prosecutor be apprised of the true state of the case, as he may be if he useth due diligence, he ought to adapt the indictment to the truth of the fact.

"But if, through a mistake on the part of the prosecutor, or through the ignorance or inattention of the officer, a bill be preferred as for murder, and it shall come out in evidence that the prisoner stood in that sort of relation to the deceased which rendereth the offence petit treason, I do not think it by any means advisable, to direct the jury to give a verdict of acquittal; for a person charged with a crime of so heinous a nature ought not to have the chance given him, by the Court, of availing himself of a plea of *autrefois acquit*. In such a case, I should make no sort of difficulty of discharging the jury of that indictment and ordering a fresh indictment for petit treason.† In this method the prisoner will have advantage of his peremptory challenges, and the public justice will not suffer. And, on the other hand, in case of an indictment for petit treason, if it be proved that the defendant killed the deceased with such circumstances of malice as amount to murder, but the relation of servant, &c. is not

proved, I have no sort of doubt that, on such an indictment, the defendant may be found guilty of murder, and acquitted of the treason, for murder is included in every charge of petit treason, *felonice proditorie et ex malitia premeditata MURDAVIT.*"

Upon this it may be observed, *First*, that although Judge Foster considers murder and petit treason offences of the same nature, so much so, that on an indictment for petit treason, a verdict may be found for murder, yet the greater advantages afforded by law to the prisoner on the trial—the peremptory challenge of 35 of the jury—the requiring two witnesses—and other circumstances—entitle a prisoner to be indicted for petit treason, if his offence actually amount to that description; and if it do amount to that description, and so comes out in evidence, but through mistake, or ignorance, or inattention of the prosecutor, the indictment is preferred as for murder, the prisoner is entitled to have that indictment dismissed. *Secondly*, If petit treason were to be considered as a distinct and higher species of offence, it is clear, in Judge Foster's opinion, there would be no doubt whatever but the prisoner, under such circumstances, must be acquitted.

But there are abundant authorities to shew that this has ever been the doctrine of the law of England. Thus, in the Year-Book, 2. Henry 7th 10. where there was a question about an accessory in the harbouring one guilty of treason (your lordships know, that in felony there may be accessories by the law of England, but in treason they are all principals), Chief Justice Hussey says, "There can be no accessory in treason; the receiving a traitor cannot be only a felony, but is treason *et in casu ibidem.*"

Thus, Saccombe's case, 33. Henry 8th is thus reported by Lord Chief Justice Dyer.* "A woman had poisoned her husband, which offence is made treason about the 31st Henry 8th (22d Henry 8th.); and by the general pardon granted by parliament in 32nd Henry 8th this offence was pardoned. Now the son had brought an appeal against the wife; the question was, whether this appeal lies, and some thought that because the offence is made treason, it mergeth each lesser crime as the crime of murder, which was before at common law, and so the offence is not punishable as murder, but as treason, and so no appeal lies. But some were of a contrary opinion, &c. But the opinion of the judges was, that the appeal was not maintainable." And the reporter refers to the case 3 H. 7. above stated.

And in Coke's report in the cases of pardons, 29th Elizabeth† it is laid down, "If murder or petit treason be made high treason, thereby the murder or petit treason is extinct, for high treason doth drown every less offence."

* 18 How. St. Tr. 1193.

† See the case of Penelope Edwards, *coram* Lawrence, J. 5 Chetw. Burn, 487, ed. of 1820; 1 Russ. 695.

* Dy. 50, a.

† 6 Rep. 13, b.

And Judge Foster, whose opinion that murder is not merged in petit treason I have already noticed, referring to Saccombe's case, which I have just read to your lordships from the report of my Lord Chief Justice Dyer; and denying its authority to prove that murder is merged in petit treason, expressly founds on it as an authority to shew that all inferior felonies are merged and extinguished in the offence of high treason; and that when an offence amounts to high treason, a trial for felony is barred.

I read from the same dissertation I have already quoted.

"There is a case in Dyer," says the learned judge, "which has been thought to favour the opinion, that the crime of murder is merged in petit treason; and that a pardon of treason discharged it, notwithstanding the exception of murder; but that case proveth nothing like it. A wife, about the 31st Henry 8th poisoned her husband. Then came a general pardon, by which treason was pardoned, but with an exception of wilful murder. The heir brought an appeal of murder against the wife, and it was adjudged that the appeal did not lie. This case doth not prove that murder is merged in petit treason, but that both murder and petit treason were merged and extinguished in the offence of high treason; for at that time, by virtue of the 22nd Henry 8th, all wilful poisoning was high treason, and being so, the appeal, not being saved by the act, was barred whether the treason had been pardoned or not."*

I mention these cases to shew, that the doctrine of the law of England is, that the minor offence merges in the higher offence. I need not trouble your lordships with further authorities upon this subject. I think what I have stated is sufficient to prove the general proposition, that, by the common law of England, all felonies merge in the offence of high treason; and that an act, amounting in its circumstances to high treason, cannot, by the law of England, be tried as a felony.

But I would now beg to call your attention to this, which I think very material in the present case; that the argument is stronger in Scotland, under the act of queen Anne, than in England under the common law. You know, that by the act of queen Anne† which was passed after the Union, and under powers reserved in the act of Union, the whole law of England, upon the subject of treason, has been imported into Scotland. The mode of trial has been imported—and on this subject there are two clauses to be adverted to. One is permissive to the queen, and her heirs, who may direct a commission of oyer and terminer, to try treason in Scotland. The other is imperative, and requires your lordships in this Court to inquire of all treasons in the same manner as the Court of King's-bench. The

third section enacts, That the "Justice Court of Scotland shall have full power and authority; and *are hereby required* to inquire by the oaths of twelve good and lawful men of the county, shire, or stewartry, where the respective courts shall sit, of all high treasons and misprisions of high treason committed within the said county, &c.; and thereupon to proceed, hear, and determine" (that is, they are *required* to proceed, hear, and determine) "the said offences whereof any person shall be indicted before them, in such manner as the Court of Queen's-bench, or the justices of oyer and terminer in England, may do by the laws of England."

So that here is a positive statute requiring this Court to proceed, and determine, according to the forms of the King's-bench in England. And, it will be conceded, that unless there are words in this act of the 52nd of the king, sufficient to repeal the former enactment, it is not competent to this Court to inquire into cases of treason, in any other way than the courts of England would inquire. The words are imperative. The first clause might be interpreted, as if a trial might take place according to the ancient forms; but as to the second clause, there can be no doubt that it demands a contrary interpretation.

It were a waste of time to say a word further upon the subject, to prove to your lordships that the rule of the common law of England as to trials for treason, and the regulations of the statute as to such trials in Scotland, are as I have stated. And it would be a still greater waste of time to attempt to show, after this statute of queen Anne, that if any treason appear upon the evidence, you cannot proceed otherwise than according to the forms of the law of England, in cases of treason.

We come, therefore, to this simple question. Does this act of the 52nd of his majesty, on which the indictment is laid, amount to an abrogation of that rule of the common law of which I have spoken, or to a repeal of this act of queen Anne? But, it is a rule that acts of parliament shall be interpreted according to the rules of the common law; and my lord Coke says, that, in particular cases, the words of an act shall be restricted in order to bring them within the rule of the common law. There is no necessity for that here, where there are two acts of parliament, and no words in the second repealing the first. If the words of the second can admit a construction leaving the former free to operate, it is necessary so to construe it. It is necessary for the Crown counsel to show, either that there are words in the 52nd of the king, that repeal the act of queen Anne, or that that act of the 52nd of the king cannot receive effect without such virtual repeal—that the evil which the act was made to control and remedy, could not be controlled and remedied, unless you were to interpret the act as repealing so much of the act of queen Anne.

If I can show, there is nothing in this act of the 52nd of the king, in its fullest and most

* Post. Cr. Law §25. † 7 Anne, c. 21.

ample interpretation—in the purposes it embraces, or in contemplation could embrace—nothing that in the least interferes with the act of queen Anne, or the regular mode of your inquiry in any case of treason—then you are bound to give to this act of the 52nd of his majesty, no other interpretation than is consistent with the act of queen Anne, a statute which is fundamentally connected with the constitution of this country. No act, that is introduced for the benefit of the subject, is to be held repealed, but by the express words of some subsequent act—still less is an act to be so repealed, which is a fundamental law of the country. The law of queen Anne is as much a part of the act of Union, as if it had been inserted in it. It was passed in consequence of a power reserved by the act of Union. It is an act upon which the liberty and the safety of the subjects of this country depend, in cases in which the Crown may bring them to trial for the highest state offence. It is, therefore, a fundamental part of the law of the country.

For a particular purpose, that of putting down local disturbances in England, this act, the 52nd of the king was passed; and you are called upon by the Crown counsel, to give this act, intended for this purpose, containing no words of repeal of the act of Anne, nor inconsistent with its provisions, an interpretation which is to subvert the form of trial for treason in this country. You cannot listen to the proposition for a moment.

Let us see what the 52nd of the king goes to. Its preamble is: "Whereas an act passed in the 37th year of the reign of his present majesty, intituled, An act for more effectually preventing the administering or taking of unlawful oaths: And whereas, it is expedient that more effectual provisions should be made as to certain oaths; be it therefore enacted," &c.

The intention of the act is the same with that of the 37th of the king, and it only extends its provisions further. If you refer to the 37th of the king, chapter 123, you will see what is the preamble of that act—you will there see the foundation of both: "Whereas divers wicked and evil-disposed persons have of late attempted to seduce persons serving in his majesty's forces, by sea and land, and others of his majesty's subjects, from their duty and allegiance to his majesty, and to incite them to acts of mutiny and sedition; and have endeavoured to give effect to their wicked and traitorous proceedings, by imposing upon the persons whom they have attempted to seduce the pretended obligation of oaths unlawfully administered; be it enacted," &c. Both acts have the same object, and arise out of the same mischief. In the 37th of the king, this is declared to be the attempts of evil-disposed persons, to seduce persons serving in the forces, and others, to mutiny and sedition. In the 52nd of the king, the object and the mischief are declared to be the same as in the

former act. Reference is expressly made in the preamble to that former act, and it is added, "Whereas it is expedient, that more effectual provisions should be made as to certain oaths."

So that both acts proceed upon a view of the legislature, to repress the attempts of persons setting about to excite others to mutiny and sedition; and the penalty for both administering and taking, by the first act, is the same; viz. transportation. In the second act, the *administering* is death, without benefit of clergy. That is the difference between the two acts. The 52nd of the king, leaves the persons *taking* the oath to the punishment of the 37th of the king; but extends the punishment of *administering* to death. And, as to the 37th of the king, are you to hold, it was the intention of the legislature to enable the courts to try those guilty of a treasonable conspiracy, as guilty of a felony, punishable with transportation? I ask, if it is possible to conceive that it was the intention of the legislature to abrogate the law of queen Anne in *this* instance? We are to gather the intentions of the legislature from the preambles of the acts, and we may throw light on them by the history of them when passed. We see the preambles—we know the circumstances in which they were passed—we know the object and intention of the legislature in framing them. And, from these considerations, and transportation being the penalty enacted, I ask, are you to be told it was the intention of the legislature to repeal the material clause of the act of queen Anne, as to trials for high treason? I say, that cannot be maintained for a moment by any lawyer desiring to have the reputation of common sense. It cannot be maintained, that either of the acts (that of the 37th, or of the 52nd) was intended to have any such effect. According to the prosecutor's interpretation of the acts, taking an oath to murder the king, might be tried as a common felony,—as a felony to be punished by transportation only. And can an oath to commit the highest species of treason that would have the effect of overturning the whole government—an oath to commit the most atrocious of all crimes—was it the intention of the legislature to repeal the act which considers these deeds as the highest species of treason—to repeal that act, and to make the taking of such oaths—and to make such conspiracies, a transportable felony? It cannot be maintained for a moment. Then what are the words of this act, that the prosecutor makes such a construction of it, as to the intention of the legislature, and that without express words of repeal? I state confidently, that the statute founded on in the indictment, cannot be held to have repealed the statute as to trials of treason: and there is an end of the whole foundation of the argument, that we can investigate this trial in the shape and form, in which it is prosecuted.

I apprehend, that, in interpreting this act,

so far as it relates to the question, whether high treason falls within it, we must again have recourse to the law of England; because along with the introduction of the general law of treason into Scotland, we must hold, that the legislature introduced the whole law of England, as applicable where treason is in question. The question, therefore, Whether, in sound construction, this act applies to a case of treason? is a question of interpretation not merely by the law of Scotland, but by the law of England; and you will see at once, that, if there were a difference in the mode of interpretation by the laws of the two countries, the rules of interpretation in the English law, and not those in the law of Scotland, must be followed. There is no difference in the mode of interpretation by the two laws. But, I know that, in the law of England, it is most distinctly laid down, that subsequent acts of parliament are to be so expounded, that they may not contradict former acts, which they do not contain express words to repeal. Thus, in Roll's Reports,* an old book in Norman French, the phraseology of which is abundantly quaint, it is laid down as a general rule, "*Leges posteriores priores contrarias abrogant.*" But, it is said, "This cannot be by ambiguous, and general words." And, it is added, "When two general statutes are made, and one contradicts the other," (it is meant to say, apparently contradicts), "both, if they can be, shall be so expounded that the one may not contradict the other. And a subsequent act, which can be reconciled with the former, shall not be a repeal of it." And in Comyns's Digest, under the word parliament, R. 9. the learned author, treating of what shall be a repeal of a statute, says, "A subsequent act which may be reconciled with a former shall not be a repeal of it."† And he refers to a passage in lord Coke's Reports, which I shall presently read. And he says, "Every statute ought to be expounded, not according to the letter, but according to the intent," referring to Roll and Plowden. And below, "The preamble is a good means for collecting the intent." "So the ground and cause of the making of a statute explains the intent." And, "So a statute ought to be construed according to the reason and rule of the common law," referring again to Plowden. And, "So a case, out of the mischief intended to be remedied by a statute, shall be construed to be out of the purview, though it be within the words of the statute," and he quotes lord Coke's 2nd Instit. p. 386. And lord Coke, 2nd Instit. p. 301, speaking of the statute of Gloster, by which an action of waste is given "against him that holdeth by law of England," (by courtesy) "or otherwise for term of life." says, "Albeit, the assignee of the tenant by the courtesy is within the letter of this law, yet no action of waste shall be brought against the assignee, for in construction of statutes,

the reason of the common law giveth great light; and the judges, as much as may be, follow the rule thereof."

I would desire of your lordships to apply to the 52nd of the king this rule, and to interpret it, as far as may be, agreeably to the rule of the common law, on the one side; and to the statute of Anne, on the other side; and see if they may subsist together."

It so happens, that this is not the first occasion (there having been many instances) in which acts have been passed, enacting into felonies, circumstances that appear very much like overt acts of treason; and lord Coke, in his exposition of the law of treason, has these words referred to by Hale: "that the passing an act, making an offence felony, is held to be a judgment of parliament that it was not treason."

I would call your lordships' attention to an act of parliament, which so far as I know, has never been repealed, 3 Hen. 7th. ch. 14, which recites, "Forasmuch as by quarrels made to such as have been in great authority, office, and of council with kings of this realm, hath ensued the destruction of the kings and the undoing of this realm; so as it hath appeared evidently, when compassing of the death of such as were of the king's true subjects was had, the destruction of the prince was imagined thereby; and for the most part, it hath grown, and been occasioned by envy and malice of the king's own household servants, as now, of late, such a thing was likely to have ensued; and, forasmuch as, by the law of this land, if actual deeds be not had, there is no remedy for such false compassings, imaginations, and confederacies, had against any lord, or any of the king's council, or any of the king's great officers in his household, as steward, treasurer, and comptroller, and so great inconveniences might ensue, if such ungodly demeaning should not be straitly punished before that actual deed were done." Then it enacts, "That if any servant, admitted to be the king's servant, sworn, and his name put into the chequer-roll of his household, &c. make any confederacies, compassings, conspiracies, or imaginations with any person or persons, to destroy or murder the king, or any lord of this realm, or other person sworn to the king's council, &c. that the said offence be judged felony; and the misdoers to have judgment and execution, as felons attainted ought to have by the common law." Any servant of the king, entering into a conspiracy to destroy or murder the king, or any lord of this realm, shall be judged guilty of felony, and the benefit of clergy even is not excluded.

So here is an act of parliament, declaring, that any of the king's household, who shall conspire to murder him, may be punished with transportation. What is the observation of my lord Coke upon this statute? He says, "to destroy or murder the king. By this act, it expressly appeareth, by the judgment of the whole parliament, that besides the confederacy,

* Vol. 2, p. 410. † Vol. 5, 318, ed. of 1822.
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conspiracy, or imagination, there must be some other overt act, or deed tending thereunto, to make it treason within the statute of 25th Edw. 3rd. *And therefore the bare confederacy, compassing, conspiracy, or imagination, by words only, is made felony by this act.* But, if the conspirators do provide any weapon, or other thing, to accomplish their devilish intent, *this, and the like, is an overt act to make it treason.*" So that, though the words are so general, that, under the act of Hen. 7, a person might be indicted of felony for conspiring the death of the king, it had never entered into the head of lord Coke, that, if this were manifested by an overt act, felony, and not treason, could be the relevant charge. On the contrary, he expressly says, that, in order that a prosecution may take place upon that statute, it is necessary that the act charged be not treason.

Now, an oath administered to 500 persons, binding them to levy war against the king, to control him, and oblige him to change his measures, or to control parliament, is an overt act of a treason created by the 36th of the king. In this respect, I cannot distinguish the case of the statute of Henry 7th from the present; and if, under the law of Henry 7th a man who had entered into a conspiracy to murder the king, could not be tried for a transportable felony, neither could he under the present statute be so tried, having administered such an oath.

Lord Hale says, "Regularly, words, unless committed to writing, are not an overt act within the statute of Edward 3rd, and the reason given is, because they are easily subject to be mistaken or misapplied, or misrepeated or misunderstood by the hearers. And this appears, by those several acts of parliament, which were temporary only, or made some words of a high nature to be but felony. The statute of 3 Hen. 7th cap. 14, makes conspiring the king's death to be felony; which it would not have done, if the bare conspiring, without an overt act, had been treason."

In like manner, this act of the 52nd of the king, makes the administering of an oath binding to commit any treason or murder, or any felony punishable by law with death, a felony; which it would not have done, if the administering of that oath had been an overt act of high treason.

And that proposition includes this other, that if there be circumstances attending the administering which constitute high treason, then it would not be a felony within this act. If my learned friends will help me out of this dilemma I shall be obliged to them. It is an implied judgment of parliament, that the act, which it makes a felony, is not an overt act of treason; and, if an act of parliament is produced, which makes that a felony, which would otherwise be an overt act of treason, the inference is, that these words of the act are to receive a limited interpretation. I apply this to the act of the 52nd of the king, and say,

that it can have reference to those instances only which are short of overt acts of high treason. The administering of an oath not amounting to an overt act of high treason, may be a felony within this act, but not otherwise, because parliament cannot be presumed to have intended to make that felony which was treason; and no overt act of high treason can come within the act as a felony. It cannot be at once a treason and a felony.

My lord Hale, in treating of the question, how far subsequent statutes are to be taken as interpreting the statute of Edward 3rd, and explaining, by the judgments of the legislature, what facts are, or are not, overt acts under that statute, has this passage: "The statutes 1st and 2nd Philip and Mary c. 3., 1st Ed. 6. c. 12., 23rd Eliz. c. 2, making several offences felony, have this wary clause, 'The same not being treason by statute 25th Ed. 3rd,' and he says, "Enacting an offence to be a felony, is a great evidence that it was not treason before, and a judgment of parliament in point; for it cannot be thought, that it would make that less than treason, which was treason by 25th Ed. 3rd." Where lord Coke wishes to shew, that a particular act cannot be an overt act of treason, he thinks it sufficient to shew, that the legislature has treated it as a felony.

I fear I have trespassed too long on your lordships' attention. I would apply what I have stated to the present case, and I need not take up much more of your time. I would apply this reasoning to the act of parliament in hand; and I maintain, that there are but these two modes of construction here—Either the act was meant to apply only to those oaths binding persons to commit treason, the administering or taking of which oaths does not constitute an overt act of treason,—I say, either this necessary restriction of the words is to be adopted in their construction—or else, there is one other alternative, and it must be held, that the statute of the 52nd of the king repealed the acts of Edward 3rd and queen Anne. There is no third way of interpreting the act of parliament, and it would be an insult to the understanding of the Court, to argue which you should adopt—whether you should take that construction, which makes the act provide for the emergency for which it was passed, and leaves untouched the statute of Anne, which was introduced for the safety of the subject—whether you shall adopt that construction which unites, with the remedy for the grievance in the view of the legislature in passing the act, the leaving the valuable provisions of former statutes untouched—or whether you shall take the opposite construction, which would repeal the whole of these laws, and would introduce into the law regarding treason, a rule which would be oppressive to the subject, and unsafe to the sovereign, by reducing to a transportable felony an overt act of treason.

There is a clause in the acts of parliament, of the 37th and 52nd of the king,—the last

clause of these acts,—in the following terms :
 “ Provided also, and it is hereby declared, that any person who shall be tried and acquitted, or convicted of any offence against this act, shall not be liable to be indicted, prosecuted, or tried again for the same offence or fact, as high treason, or misprision of high treason ; and, that nothing in this act contained shall be construed to extend to prohibit any person guilty of any offence against this act, and who shall not be tried for the same as an offence against this act, from being tried for the same as high treason, or misprision of high treason, in such manner as if this act had not been made.” I conceive, that it is from loosely interpreting this clause, that there was a notion entertained by some persons, that there is something in it which opposes the construction I have put on the other clauses. You will observe the very same clause, which is in the statute of the 32nd of the king, is in the act of the 37th of the king ; which last mentioned act regards the intentions of the parties, as well as the purport and intentment of the oath, and which makes the administering, as well as the taking, of the oath only a transportable felony. The clause is in the one as well as the other act. Let us see—It is first said, “ That any person who shall be tried and acquitted, or convicted of any offence against this act, shall not be liable to be indicted, prosecuted, or tried again for the same offence or fact, as high treason, or misprision of high treason ;”—let us see, if there be not a case consistent with our interpretation, which renders this enactment necessary.

Suppose a person to be brought to the bar, under this very charge which is here stated against the prisoner, for administering or taking an oath binding to the commission of high treason, but by the levying of a war, other than that particular sort of war described in the statute of the 36th of the king. It is laid down by all the authorities, that the conspiring to levy war generally is not an overt act of treason. The conspiring the death of the king is a treason—and the actual killing of the king cannot be prosecuted as a murder, but must be prosecuted as an overt act, testifying an intention to put the king to death. Conspiring to levy war is *not* treason—the levying of war itself is treason. Then comes the statute of the 36th of the king, which declares the compassing or imagining the levying of war for certain purposes, as, to constrain the king, or either or both houses of parliament, shall be considered an overt act of treason. The meaning of this oath, then, if it be not mere words which mean nothing, was to bind a number of persons to levy war, and this to constrain the king, or either or both houses of parliament, and this amounts to an overt act of treason under the statute of the 36th of the king, and cannot be tried as a felony.

: Suppose war levied for the purposes pro-

fessed by those unfortunate persons who assumed the name of Luddites ; for the purpose of destroying, in the town of Nottingham and its vicinity, particular pieces of machinery used in the knitting of stockings. To destroy stocking-frames, or any particular pieces of machinery, in any particular place or district, is neither levying war under the statute of Edward 3rd, nor under the 36th of the king. Suppose they had levied war—suppose they had conspired to levy this sort of war—it would not be treason. It could only be tried under this act, which makes it felony.

Suppose a person accused of felony, under this act, for administering oaths, to levy such sort of war as is treason under the act of Edward 3rd, but the *conspiring* to levy which is *not* treason ; and, suppose him to be acquitted—and suppose war afterwards levied by those with whom he had conspired ; then, by the law of England, without the last clause in this act, he might be tried over again for treason, though he had been acquitted on the trial for felony. It was necessary to insert this clause, or else this evil would have arisen. The legislature were aware, when they enacted, that the administering of an oath to commit treason should be felony, that it approached near to an act constituting high treason ; and they therefore declared that, though it should happen afterwards to be discovered that it amounted to high treason, if this did not appear at the time of a trial for the administering as a felony, the administrator should be entitled to plead the acquittal. That was equitable.

Suppose a person convicted of the minor offence of taking the oath, and sentenced to transportation ; the act declares he shall not be again tried for this minor offence, though it may have involved him in high treason. It is a reasonable object to attribute to the legislature, the intention of putting by this law the subjects of this country in safety, and preventing them from being oppressed by the officers of the crown.

The legislature have in their view, that, in cases of treason, the counsel of the crown are employed, and great pains taken to convict the accused—that the minds of the jury, too, are likely to be poisoned with prejudice against them. The legislature, therefore, where there is a charge of treason, give different rules and afford different safeguards, from those in common cases of felony ; and, is it reasonable that this act of parliament, made for a particular purpose, should be held to deprive the subject of these safeguards?—or can it be held that great treasonable offences may be committed, and only punished by transportation ? You see how the judges proceed in such a case in England. If a person be indicted for felony and, either upon the face of the indictment, or otherwise, it appear to the judges that the act charged is treason, they would desire the indictment to be withdrawn, and an indictment for treason to be preferred. Suppose

conspiracy, or imagination, there must be some other overt act, or deed tending thereunto, to make it treason within the statute of 25th Edw. 3rd. *And therefore the bare confederacy, compassing, conspiracy, or imagination, by words only, is made felony by this act.* But, if the conspirators do provide any weapon, or other thing, to accomplish their devilish intent, *this, and the like, is an overt act to make it treason.*" So that, though the words are so general, that, under the act of Hen. 7, a person might be indicted of felony for conspiring the death of the king, it had never entered into the head of lord Coke, that, if this were manifested by an overt act, felony, and not treason, could be the relevant charge. On the contrary, he expressly says, that, in order that a prosecution may take place upon that statute, it is necessary that the act charged be not treason.

Now, an oath administered to 500 persons, binding them to levy war against the king, to control him, and oblige him to change his measures, or to control parliament, is an overt act of a treason created by the 36th of the king. In this respect, I cannot distinguish the case of the statute of Henry 7th from the present; and if, under the law of Henry 7th a man who had entered into a conspiracy to murder the king, could not be tried for a transportable felony, neither could he under the present statute be so tried, having administered such an oath.

Lord Hale says, "Regularly, words, unless committed to writing, are not an overt act within the statute of Edward 3rd, and the reason given is, because they are easily subject to be mistaken or misapplied, or misrepeated or misunderstood by the hearers. And this appears, by those several acts of parliament, which were temporary only, or made some words of a high nature to be but felony. The statute of 3 Hen. 7th cap. 14, makes conspiring the king's death to be felony; which it would not have done, if the bare conspiring, without an overt act, had been treason."

In like manner, this act of the 52nd of the king, makes the administering of an oath binding to commit any treason or murder, or any felony punishable by law with death, a felony; which it would not have done, if the administering of that oath had been an overt act of high treason.

And that proposition includes this other, that if there be circumstances attending the administering which constitute high treason, then it would not be a felony within this act. If my learned friends will help me out of this dilemma I shall be obliged to them. It is an implied judgment of parliament, that the act, which it makes a felony, is not an overt act of treason; and, if an act of parliament is produced, which makes that a felony, which would otherwise be an overt act of treason, the inference is, that these words of the act are to receive a limited interpretation. I apply this to the act of the 52nd of the king, and say,

that it can have reference to those instances only which are short of overt acts of high treason. The administering of an oath not amounting to an overt act of high treason, may be a felony within this act, but not otherwise, because parliament cannot be presumed to have intended to make that felony which was treason; and no overt act of high treason can come within the act as a felony. It cannot be at once a treason and a felony.

My lord Hale, in treating of the question, how far subsequent statutes are to be taken as interpreting the statute of Edward 3rd, and explaining, by the judgments of the legislature, what facts are, or are not, overt acts under that statute, has this passage: "The statutes 1st and 2nd Philip and Mary c. 3., 1st Ed. 6. c. 12., 23rd Eliz. c. 2, making several offences felony, have this wary clause, 'The same not being treason by statute 25th Ed. 3rd,' and he says, "Enacting an offence to be a felony, is a great evidence that it was not treason before, and a judgment of parliament in point; for it cannot be thought, that it would make that less than treason, which was treason by 25th Ed. 3rd." Where lord Coke wishes to shew, that a particular act cannot be an overt act of treason, he thinks it sufficient to shew, that the legislature has treated it as a felony.

I fear I have trespassed too long on your lordships' attention. I would apply what I have stated to the present case, and I need not take up much more of your time. I would apply this reasoning to the act of parliament in hand; and I maintain, that there are but these two modes of construction here—Either the act was meant to apply only to those oaths binding persons to commit treason, the administering or taking of which oaths does not constitute an overt act of treason,—I say, either this necessary restriction of the words is to be adopted in their construction—or else, there is one other alternative, and it must be held, that the statute of the 52nd of the king repealed the acts of Edward 3rd and queen Anne. There is no third way of interpreting the act of parliament, and it would be an insult to the understanding of the Court, to argue which you should adopt—whether you should take that construction, which makes the act provide for the emergency for which it was passed, and leaves untouched the statute of Anne, which was introduced for the safety of the subject—whether you shall adopt that construction which unites, with the remedy for the grievance in the view of the legislature in passing the act, the leaving the valuable provisions of former statutes untouched—or whether you shall take the opposite construction, which would repeal the whole of these laws, and would introduce into the law regarding treason, a rule which would be oppressive to the subject, and unsafe to the sovereign, by reducing to a transportable felony an overt act of treason.

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The legislature have in their view, that, in cases of treason, the counsel of the crown are employed, and great pains taken to convict the accused—that the minds of the jury, too, are likely to be poisoned with prejudice against them. The legislature, therefore, where there is a charge of treason, give different rules and afford different safeguards, from those in common cases of felony; and, is it reasonable that this act of parliament, made for a particular purpose, should be held to deprive the subject of these safeguards?—or can it be held that great treasonable offences may be committed, and only punished by transportation? You see how the judges proceed in such a case in England. If a person be indicted for felony and, either upon the face of the indictment, or otherwise, it appear to the judges that the act charged is treason, they would desire the indictment to be withdrawn, and an indictment for treason to be preferred. Suppose

the trial proceeds without any such objection, and, on the evidence, treason is found to have been committed, the judge discharges the jury of that indictment. Judge Foster says, I will not give a chance of acquittal, but I will discharge the jury, and will give the prisoner the benefit of the mode of trial appointed for cases of treason.

What is the result of an opposite construction of the act? It is this. All actions are popular in England. Persons accused by any one of the people of conspiring to commit treason, must be brought before a grand jury—but, according to the prosecutor's construction of this act, they may be guilty of treason, and yet be tried in the ordinary way, and as only guilty of a felony. An accomplice may indict them under these acts, and those, who ought to be capitally punished for treason, may be transported for seven years as for an inferior felony.

I submit upon all these views, the prosecutor's construction cannot be put upon this act. Felony merges in treason; and if, in an indictment for felony, the prosecutor make a charge of treason, or if the facts of the case turn out and appear on the evidence to be treason, you cannot proceed in the trial for felony; neither by the rule of the common law of England, nor by the statute of Anne referred to. There are no words in the act 52nd of the king, which go to repeal the the act of Anne, or abrogate the common law. The interpretation given by the prosecutor would involve the acts in contradiction and absurdity, and ascribe views which cannot be ascribed to the legislature. I submit, that, according to my construction, the act is consistent with the remedy for the evil—with the intention of the legislature—with common sense—and with sound construction of law.

I may have stated some things at too great length and some at too little. I was anxious to explain my view of this case; and in so doing I have, I fear, trespassed too long on your lordships time and attention.

Lord Justice Clerk.—There is no occasion for any apology at all.

Mr. Clerk.—An important objection to the indictment has been noticed by the Court, with respect to which, it has been asked by your lordships, * whether the counsel for the prisoner have a wish to argue it? I beg leave to offer a few observations upon the point.

The objection is, that the allegations in the indictment do not describe that offence, which is prohibited by the act of parliament, and that therefore the indictment is irrelevant and inept. The crime described in the statute, is the administering an oath or engagement, *purporting or intending* to bind the person taking the same, to commit any treason, &c. But the prisoner is not charged with an offence so described; the charge against him in the

minor proposition of the indictment being, that he administered an oath or engagement, *binding* (not *purporting* to bind) the persons taking the same to commit treason. Thus there is a manifest difference between the statutory offence and that which is charged in the indictment.

To administer an oath, *purporting or intending* to bind the person taking the same, is an act highly criminal, and accordingly, it is by the statute punishable with death. But the allegation against the panel charges him with an act, which is not punishable by the statute, in which no such offence is mentioned. In all probability no statute will ever be made, declaring that which is charged against the prisoner in this indictment to be punishable with death, or with any other punishment or penalty whatever. But, at all events, the prosecutor has totally failed in this indictment to describe the statutory offence. Indeed, the prosecutor's description of the crime supposed to have been committed defeats itself, by containing a plain and direct contradiction in its terms. He alleges that the prisoner administered an oath, *binding* the persons taking the same to commit treason. This allegation pre-supposes that a person, taking an oath to commit high treason, is *actually bound* by such an oath, which is an evident absurdity. An oath may be binding where its obligation is to do a thing that is *legal* or *innocent*; but no obligation or binding engagement can ever result from an oath to commit high treason, or an oath to commit any other crime. Nobody can be *bound*, by the most tremendous oath, to violate every previous obligation and engagement he has come under. As the prosecutor describes the offence, therefore, no such offence could exist; and the statement of it is a contradiction in terms, in so far as it supposes the party taking the oath to be bound *by his allegiance*, without which he could not commit high treason; and supposes, at the same time, that he was *not bound* by his allegiance, but actually bound by the oath which he took. Such an absurdity as this, can never be sustained in any criminal charge, or indeed in any legal proceeding; and much less can it be sustained in a charge upon which the accused party is to be tried for his life.

But, though the absurdity were less evident than it is, the objection to the terms of the charge is insurmountable, upon the plain and simple fact that the averment of the prosecutor does not charge the prisoner with the *statutory* offence. It would indeed have been very extraordinary, if the legislature, in describing an offence of so high a nature as to be punishable with death, had fallen into the absurdity which has crept into this indictment. The statute does not assert, or acknowledge the possibility of administering or taking an oath, of strength enough to *bind* the person taking it to commit high treason, or to commit murder, or any other crime. On the contrary, it is clearly implied, in the very terms of the statute, that

* *Vide ante* p. 308.

such oath is, to all intents and purposes whatsoever, destitute of binding force. The criminality contemplated in the statute, is that of violating, by the total perversion and misapplication of a solemnity, the obligations which bind men to each other in society—a violation of the most dangerous nature, perpetrated by the most wicked means. To administer an oath, purporting or intending to bind the person taking the same to commit any treason or murder, is a wicked and dangerous violation of the most sacred engagements, though it cannot alter them. This is the statutory crime; but as no such crime is charged in the indictment, the objection suggested on the bench is perfectly well founded.

Mr. Drummond.—It is now my duty to submit to your lordships, some remarks upon the other side of the question; and, after the long discussion which has already taken place, upon almost the same indictment as that now under your view, and after the ample time which you have had for private consideration of the subject now before you, I do not feel myself called upon to enter so much at large into the case, as otherwise I might have done. Indeed, there were some arguments used upon the other side of the bar of which I shall omit all notice, as not appearing to me to have any intimate connection with the points at issue, or to be likely to influence the ultimate decision. But there are others which are of great importance; and to these I shall at once proceed.

The first and great point that appears to me for your lordship's consideration, is, the construction and meaning of this oath; for, unless the oath has the meaning which we put upon it, it is unnecessary to say a single word upon any other part of this indictment. By what rule of construction then, are we to find out the meaning of the oath? Are we to take the literal meaning of the words, or to put a more liberal construction upon them? I am not afraid of any of the rules of construction that may be adopted on the other side of the bar; but I suppose it is unnecessary for me to say any thing as to the literal meaning of the words, as this will obviously bear but one interpretation; and this is not the mode my learned friends have had recourse to. Let us then take the plain meaning and sense of the oath, and put upon it that meaning which, in the common intercourse of life, is put upon words; and, I have no hesitation in saying, that this is the rule of construction by which, in my opinion, the oath should be tried. The counsel on the other side have employed great ingenuity in attempting to construe the oath, and have taken a course which no man of common sense, in the ordinary affairs of life, would have hit upon. They have endeavoured to construe out of the oath, a reservation of illegality, that is, of illegal measures, for the prosecution of the objects in view by those bound by the oath. They assert, that when this oath was taken, this reservation was understood to be implied, that the objects

in view were meant to be accomplished by all legal methods, but not by any illegal methods, and they say, that your lordships are called upon to give this construction and meaning to the oath. Upon the other hand, I submit that there is no reservation of illegality within the compass of this oath. The oath is general, and has no reservations; it extends to, and includes all methods necessary for the accomplishment of the ends in view, whether by moral or physical strength.

In construing the meaning of the oath, in a question of relevancy, you will take into view, not the mere meaning of the words of the oath itself, but also all the circumstances under which it is libelled that the oath was administered and taken. It is libelled, that the oath was wickedly, maliciously, and traitorously administered; and imported an obligation to commit treason. If the oath may mean what the prosecutor says it does, as he libels that the act was done wickedly, maliciously, and traitorously, I have to submit that the charge is relevant, and that the prosecutor is not bound, in this stage of the process, to shew that this is of necessity the meaning of the oath. He is entitled to stand upon this ground, that, if the oath may mean what he says it does; and may bear the meaning with which, in the indictment, he says it was administered and taken, you are bound, libelled as it is, to give it the construction which the prosecutor says it bears, to the effect of sending the charge to a jury. It will ultimately remain for the jury to decide as to the guilty purpose.

But this is not the naked case before your lordships. There are other circumstances which are not to be lost sight of in construing this oath. Your lordships, in looking at the indictment, will see that the oath was administered at secret meetings; a material circumstance in considering the views and intentions with which it was administered. You will remember, that the society or conspiracy which was in view of the persons who administered and took this oath, was one of a very extensive nature, including a brotherhood of Britons of every description; and that the oath was actually administered to several hundred persons. These are remarkable features of the case, that the oath was so extensively administered, and that the object of the association was so unlimited. It is also set forth in the indictment, that this oath has been administered to persons who, conscious of their guilt in the premises, have absconded and fled from justice; and this is a circumstance relevant to pass to an assize, and, like all the other circumstances libelled, must be taken for granted as true by your lordships in judging of the relevancy.

The taking of any oath of secrecy is, of itself, a presumption of guilt; and a secret purpose of any kind is a presumption against the panel. I know, that other oaths were alluded to by the opposite counsel; and, as an instance of innocence with regard to the objects of them, those of Freemasons were cited. But, I submit, that

I am correct in stating the general rule, and that these form an exception. Freemasonry is an old piece of folly, at least; and, it is not only notorious that Freemasons have nothing to conceal, but it has been ascertained by experience, that mischievous consequences have not, in this country, followed from the oaths of secrecy of that institution. But, though there may be secret oaths of an innocent description, the presumption is against them, and particularly against such an oath of secrecy as the present, under the awful sanction of death; for it seems to have been a standing rule of the conspiracy to murder all informers.

The attempts, however, to shew that the oath might be quite innocent, appeared at length to be abandoned, and a distinct admission was made, that the administering or taking of this oath is a "misdemeanor;" by which, I suppose, was meant (for the word has no technical meaning here) something criminal at common law, though not in the highest degree. Now, if it be criminal, in what can the criminality consist but in the treasonable purpose and preparation? There is plainly no other wicked or unlawful purpose in view.

The oaths of allegiance, of supremacy, and others, were alluded to by Mr. Cranstoun, who ingeniously argued, that, according to our principle of construction, the administration of these oaths might be held to imply an obligation to commit treason. But the question here is not what extraordinary constructions the ingenuity of learned men may put upon what may be placed before them. The question is, What would a man of common sense think upon the subject, did it come before him in any ordinary transaction of life? Such fanciful illustrations are little to the purpose. But I happen to have here a specimen of another oath, the striking similarity of which to the present cannot fail to attract particular attention. It was the foundation of all that conspiracy in Ireland, which afterwards ended in open rebellion against the government; and your lordships will see how the terms of the oath cited in the indictment tally with the terms of the oath, or test, as it was called, which I am now about to read: "In the awful presence of God, I, A. B. do voluntarily declare, that I will persevere in endeavouring to form a brotherhood of affection among Irishmen of every religious persuasion; and that I will persevere in my endeavours to obtain an equal, full, and adequate representation of all the people of Ireland. I do further declare, that neither hopes, fears, rewards, or punishments, shall ever induce me, directly or indirectly, to inform on or give evidence against, any member or members of this or similar societies, for any act or expression of theirs done or made, collectively or individually, in or out of this society in pursuance of the spirit of this obligation."* I hear one of the opposite counsel

remark, that this oath contains no obligation to commit treason; but, I do not know with what view the remark is made, unless it be to mark the contrast between the oath which introduced the Irish rebellion and all its terrible consequences, with that more atrocious oath now under consideration.

The terms of the oath in the indictment are now so well known to your lordships, that I need not point out the particular differences between the two oaths.

What the prosecutor says is, that this oath means to bind the person taking the same to commit treason; and it is objected, that he has not told your lordships, on the face of the indictment, what species of treason the taker of the oath is bound to commit. Here I must request your lordships' attention to what appeared to me to be a palpable fallacy in the opposite argument. The case was all along pleaded by the learned gentleman, as if the prosecutor had been charging the panel with the crime of treason itself. Now there is no charge of treason; but a charge of administering an unlawful oath—an oath binding to commit treason, which object of the oath must indeed be libelled, otherwise there is no relevant charge. But the indictment is not to be construed as if it had been libelled that treason was actually committed; nor is such a specification of treason to be required as if it had been charged as the offence of which the panel is accused, and for which he is brought to trial, and not merely as existing in intention. The essence of the relevancy is what the panel *did*, not what *he had in view*; of which, no more can be told than what the oath itself reveals. Any thing else is an inference in law, which can add nothing to the relevancy. Now, although the prosecutor has not drawn an inference in law from the facts, he has told your lordships, not only the acts done, but all that he knows of the acts which the parties bound themselves to commit. He tells what the facts are, which, it is the inference in law, if done, would have been treason. But in judging of the relevancy, you are not merely to judge whether the prosecutor is right in his inference from the facts; your lordships will go to the oath, and draw the conclusion in your own minds. At the same time, I have no hesitation in saying here, that the kind of treason which the parties bound themselves to commit, is plainly that of levying war against the king. I shall presently speak more particularly to the treason, and will show, that the treason which the oath bound to commit is that now alluded to.

Before leaving the oath, I may make some further remarks upon what, with such ingenuity and force, was stated by Mr. Cranstoun. Instead of taking the whole oath into view, he divided it into four parts, and drew separate conclusions from all those parts—a rule of construction quite out of the question. It might be as well pleaded to a jury, in a case of circumstantial evidence, that they are to

* See the trial of Finney for high treason, 5 How. Mod. St. Tr. 1075, in which the above oath, or test, was given in evidence.

judge of each circumstance by itself. In construing the oath, Mr. Cranstoun set out with stating, that a brotherhood of affection is an innocent, and even a laudable object, and somewhat quaintly added: "That it is a pleasant thing for brethren to dwell together in unity." This may be very ingenious, but I say, with deference, that it is trifling with the case, to make such remarks to your lordships. The oath is not to be torn piece-meal. The meaning is to be drawn from a fair consideration of the whole of it. I might as well take each word or letter of the oath individually, and say, that every word or letter taken by itself is not criminal, as thus break it into parts, and argue upon each without reference to the rest. Not that I think his conclusions, even as he took the clauses, were justified by the clauses themselves. I cannot admit any such thing—but I protest against this way of construing the oath, or construing any thing.

It was said, founding upon the other argument, the reservation of illegality, that we may petition for annual parliaments and universal suffrage—that these objects *may* be accomplished by lawful means—and, from this, the conclusion was drawn, that there was nothing illegal done or intended. But the question is, whether the end can justify any means that may be employed in obtaining it. It is the *violent means* which we charge as criminal, and these are left totally out of view, in the argument on the other side of the bar.

Then the word "strength" is taken up, and a construction is given to it to show, that the term in the oath was applicable to an individual and not to a number of individuals. There the learned gentleman lost sight of the beginning of the oath, where the brotherhood is mentioned. From this, however, and the whole context of the oath, I apprehend it to be perfectly clear, that in considering the meaning of the word "strength," we are not to apply it to an individual, but to as many as could be brought to join in this society or conspiracy.

On the whole, I must confess that I have not been able to discover the distinction between force and strength in this oath. It would have conveyed the same conclusion to my mind, if the one word had been employed as well as the other. Physical strength has just as plain and obvious a meaning where it stands, as any words can have. It is not an uncommon expression among the lower orders of politicians; and, I am afraid, the idea is perfectly familiar to them. Now, notoriety is as good a rule of construction as could be had recourse to. It was said, that grammatical niceties are out of place here, and that strict rules of criticism would be misapplied in interpreting the language of such a man as the panel at the bar. I perfectly approve of the remark. I wish the oath to be taken in the meaning which men in the lower ranks of life would apply to it. Strength, as it here stands, can mean nothing else than the means, the power,

or force to be employed against the obstacle or contrary force that might stand in the way of the accomplishment of the objects in view, whatever they might be; and the united strength of numbers is plainly meant.

Supposing it were possible to put such a construction upon the words as that contended for on the other side of the bar, let us see the effect of it—let us attempt to insert such unambiguous words as would unquestionably give the oath what they say is the meaning of it: and by a fairer test it cannot be tried.—Thus: "But I bind myself to do nothing contrary to law, or to attempt anything by force against any subsisting right;" I ask whether if these words were stuck into the middle of this oath, they would not stultify it, and make it quite contradictory, and palpably absurd.

A great deal was said about the presumption in favour of the innocence of the panel. This is a common topic of declamation; but, I must confess, I never could understand the presumption of the innocence of a panel. I am aware that the *onus probandi* lies upon the prosecutor, and that if he fail to make out his case, the panel must be assoilzied; but I see no room for a presumption of any sort, but what arises from the want of contrary proof; and I know of no such doctrine in any work upon the criminal law of Scotland. The fact is, that in a question of relevancy, there is rather a presumption of guilt; or, to speak more correctly, an assumption of the truth of the libel. Every thing is supposed to be wickedly and maliciously done, as libelled; and the question is, supposing all this proved as charged, does it infer a punishment in law? as, otherwise, it is impossible to allow a proof of what is alleged.—I might argue, that the presumption is against the man who takes such an oath as that libelled, which even my learned friends admit to be contrary to law, and a punishable offence, though not of the description set forth in this indictment; and that, from the very circumstance of the panel having taken such an oath, the *onus* lies no longer with the prosecutor to prove his guilty purpose, but with the panel to reconcile his conduct to innocence if he can. But, upon any view of the subject, I should like to know what presumption, or what rule or principle calls for such a construction as that put upon the oath. Is it the protection of innocence, or that "*sense of public duty*" that was spoken of in the last debate, or any laudable principle under the sun, that makes it necessary to do such violence to language and common sense, to suppress the truth, or to pervert the plain sense and fair meaning of any thing?

I shall now beg leave to request your lordships' attention to what the persons administering and taking this oath bound themselves to do; and, I have to submit, that it is plain, from all the authorities upon treason, that the accomplishment of universal suffrage, when carried into effect by the force of numbers, is treason, by levying war against the king. It

infer the destruction of the British constitution, which could not subsist for a single day under such a system of things, in the present circumstances of this extensive empire. The accomplishment of any public purpose by violence is treason; but to accomplish universal suffrage by violence, is undoubtedly a destruction of the constitution itself. I do not believe that there is a difference among any of the great authorities upon this point. In looking for authorities, I naturally had recourse to some of the late trials for treason in England, to see how the judges there laid down the law in such cases. Lord Leithborough, in the case of Lord George Gordon, said, "I am peculiarly happy that I am enabled to state the law on the subject, not from any reasonings or deductions of my own, which are liable to error, and in which a change or inaccuracy of expression might be productive of much mischief; but from the first authority, from which my mouth only will be employed in pronouncing the law, I shall state it to you in the words of that great able, and learned judge, Mr. Justice Foster, that true friend to the liberties of his country."* I quote this, to show to what authorities the English judges have recourse, when considering questions of this kind. At the end of this trial, the same law was laid down by lord Mansfield; but I shall first read the passage from Foster himself. Part of it was already read by the learned gentleman opposite, but, as he stopped exactly where I wished him to go on, I shall be under the necessity of reading the whole. I request your lordships' attention to the manner in which Foster differs from the opinion of Hale, on the very point on which Hale's authority has been so much rested on in the present case, and for which he has been called the "great father of the law of treasons." Hale's opinion does not appear to me to be quoted as so completely conclusive on the question by the great authorities in England as is done here. They have recourse to more recent expositions of the law.

"Lord Chief-Justice Hale," says Foster,† "speaking of such unlawful assemblies as may amount to a levying of war within the 25 Elizabeth, c. 3, taketh a difference between those insurrections which have carried the appearance of an army, formed under leaders, and provided with military weapons, and with drums, colours, &c. and those other disorderly tumultuous assemblies, which have been drawn together, and conducted to purposes manifestly unlawful, but without any of the ordinary shew and apparatus of war before mentioned.

"I do not think any great stress can be laid on that distinction. It is true that, in case of levying of war, the indictments generally charge, that the defendants were armed and arrayed in a warlike manner; and, where the case would admit of it the other circumstances

of swords, guns, drums, colours, &c. have been added. But, I think, the merits of the case have never turned singly on any of these circumstances.

"In the cases of Damaree and Purchase, which are the last printed cases that have come in judgment on the point of constructive levying war, there was nothing given in evidence of the usual pageantry of war;—no military weapons—no banners or drums—nor any regular consultation previous to the rising. And yet the want of those circumstances weighed nothing with the Court, though the prisoner's counsel insisted much on that matter. The number of the insurgents supplied the want of military weapons; and they were provided with axes, orows, and other tools of the like nature, proper for the mischief they intended to effect:

"*Furor arma ministrat.*"

"Sect. 1.—The true criterion, therefore, in all these cases, is *quo animo* did the parties assemble? For, if the assembly be upon account of some private quarrel, or to take revenge of particular persons, the statute of treasons hath already determined that point in favour of the subject."

"Sect. 3. (p. 210.)—But every insurrection which, in judgment of law, is intended against the person of the king, be it to dethrone or imprison him—or to oblige him to alter his measures of government—or to remove evil councillors from about him—these risings all amount to levying war within the statute; whether attended with the pomp and circumstances of open war or no. And every conspiracy to levy war for these purposes, though not treason within the clause of levying war, is yet an overt act within the other clause of compassing the king's death. For those purposes cannot be effected by numbers and open force without manifest danger to his person.

"Sect. 4.—Insurrections, in order to throw down all enclosures, to alter the established law, or change religion, to enhance the price of all labour, or to open all prisons; all risings in order to effect these innovations, of a public and general concern, by an armed force, are, in construction of law, high treason, within the clause of levying war. For, though they are not levelled at the person of the king, they are against his royal majesty; and, besides they have a direct tendency to dissolve all the bonds of society, and to destroy all property, and all government too, by numbers, and an armed force. Insurrections likewise for redressing national grievances, or for the expulsion of foreigners in general, or indeed any single nation living here under the protection of the king, or for the reformation of real or imaginary evils of a public nature, and in which the insurgents have no special interest; risings to effect these ends by force and numbers, are, by construction of law, within the clause of levying war; for they are levelled at the king's crown and royal dignity."

* 21 How. St. Tr. 490. † Cr. L. 208.

Further, in speaking of the case of Damaree and Purchase, formerly mentioned, he says, (p. 215) "Upon the trial of Damaree, the cases referred to before, in sections 4th and 5th, were cited at the bar; and all the judges present were of opinion, that the prisoner was guilty of the high treason charged upon him in the indictment. For here was a rising with an avowed intention to demolish all meeting-houses in general; and this intent they carried into execution as far as they were able. If the meeting-houses of the protestant dissenters had been erected and supported in defiance of all law, a rising to destroy such houses in general, would have fallen under the rules laid down in Keiling, with regard to the demolishing all bawdy-houses. But since the meeting-houses of protestant dissenters are, by the Toleration act, taken under the protection of the law, the insurrection, in the present case, was to be considered as a public declaration by the rabble against that act, and an attempt to render it ineffectual by *numbers and open force*.—Accordingly, Damaree was found guilty, and had judgment of death, as in cases of high treason."

These were the passages quoted as authorities by lord Loughborough in the trial I have mentioned. And in the charge to the jury by lord Mansfield, at the close of the trial, a summary of the same doctrine is very clearly laid down. "There are two kinds of levying war; one against the person of the king; to imprison, to dethrone, or to kill him; or to make him change measures or remove counsellors—the other, which is said to be levied against the majesty of the king, or, in other words, against him in his royal capacity; as when a multitude rise and assemble to attain by force and violence any object of a general public nature, that is levying war against the majesty of the king; and most reasonably so held, because it tends to dissolve all the bonds of society, to destroy property, and to overturn government, and, by force of arms, to restrain the king from reigning according to law."

"Insurrections, by force and violence, to raise the price of wages, to open all prisons, to destroy meeting-houses, nay, to destroy all brothels, to resist the execution of militia laws, to throw down all enclosures, to alter the established law, to change religion, to redress grievances real or pretended, have all been held levying war. Many other instances might be put. Lord chief-justice Holt, in *sir John Friend's* case says,—'If persons do assemble themselves, and act with force in opposition to some law which they think inconvenient, and hope thereby to get it repealed, this is levying war and treason.' In the present case, it does not rest upon an implication that they hoped, by opposition to a law, to get it repealed; but the prosecution proceeds upon the direct ground that the object was, by force and violence, to compel the legislature to repeal a law: and therefore, without any doubt, I tell you the joint opinion of us all, that if this

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multitude assembled with intent, by acts of force and violence, to compel the legislature to repeal a law, it is high treason. Though the form of an indictment for this species of treason mentions drums, trumpets, arms, swords, fifes, and guns, yet none of these circumstances are essential. *The question always is, whether the intent is by force and violence, to attain an object of a general and public nature by any instruments, or by dint of their numbers.*"

In like manner, serjeant Hawkins thus expresses himself:—"Those, also, who make an insurrection in order to redress a public grievance, whether it be a real or pretended one, and of their own authority attempt with force to redress it, are said to levy war against the king, although they have no direct design against his person, inasmuch as they insolently invade his prerogative, by attempting to do that by private authority, which he by public justice ought to do, which manifestly tends to a downright rebellion; as where great numbers by force attempt to remove certain persons from the king; or to lay violent hands on a privy counsellor; or to revenge themselves against a magistrate for executing his office; or to bring down the price of victuals; or to reform the law or religion; or to pull down all bawdy-houses; or to remove all enclosures in general, &c. But where a number of men rise to remove a grievance to their private interest, as to pull down a particular enclosure, intrenching upon the common, &c. they are only rioters."

I am not afraid to place beside all these great names our own authority, Mr. Hume, in whose work you will find a most luminous and accurate summary of the doctrine which I have now been quoting from the English authors. Mr. Hume† says, "In the construction of law, the levying of war against the king is not understood in those insurrections only which have immediate relation to the person of his majesty, as if the object be to dethrone or imprison him, or to drive him out of the realm, or to cause him alter his measures, or to remove evil counsellors from his presence. It equally embraces all those risings, which, though not aimed directly at the person of the king, are however against his royal majesty, that is, against his crown or royal dignity, against his prerogative, authority, or office. Under this description, according to all authorities, falls an insurrection for any of these objects,—to reform the established law, religion, or political constitution of the land; or to obtain redress for national grievances, whether real or imaginary. For though they be real, the law and government of the realm, as long as they subsist, cannot know any thing of this course of correcting them, nor make account of it as any other than rebellion against the king, who, as head of the state, is bound to prevent all such forcible interference of

* 21 Hew. St. Tr. 644.

† 2 Comm. 427.

private persons with his own functions, or those of the legislative power."

By all the authorities, the same rules of law are clearly and distinctly laid down, and they are quite applicable to the present case. The treason which the oath binds those taking it to commit, if the public purpose in view had been carried into effect, viz. the establishment of universal suffrage, by force and violence, would have been levying war against the king.

A passage was quoted from lord Hale by the learned gentleman, in disapprobation of an expression in the indictment, "the subversion of the established government," as being too vague for a charge of treason. But, it would not escape your observation, that he read only three lines, and left out the subsequent part of the passage in the indictment, which is the example and explanation of what he did read, and contains every specification that is possible in the circumstances of the case. The statement in the indictment is, "which oath or engagement, or obligation to the foregoing purport, did bind, or did purport or intend to bind, the persons taking the same to commit treason, by effecting, by physical force, the subversion of the established government, laws, and constitution of this kingdom, and *especially by obtaining annual parliaments and universal suffrage by unlawful and violent means.*"—As to the word *force*, it was introduced merely to express our conception of the meaning of the oath, and to shew, that we understand *strength*, where it stands, to include every meaning that any person could suppose to be contained in *force*, had it been there; and it is for your lordships to say whether we are right or not.

There is another part of the indictment to which an objection was made—the passages at the end of each specific charge, which, it is said, are not exactly in terms of the expressions of the statute. The truth is, those clauses are altogether mere surplusage. There is, besides, a previous reference to the general clause at the commencement of the indictment. "Administer or cause to be administered, or did aid or assist at the administering, an oath, or engagement, or obligation, *in the terms above set forth, or to the same purport.*" But, above all, there is a most distinct reference in the phrase, "*as said is,*" which takes back the attention to the whole preceding generality. This is the general mode of expression where many instances of a crime charged are stated—"as said is," being added to each instance that is given. Forgery and uttering forged notes, for example, are charged in a general clause at the beginning of an indictment, and then particular instances are given in much shorter terms, referring to the preceding generality; and, unless this is done, what precedes must be totally useless, and mere surplusage. Now, you will observe, the general charge is the only one in which the oath appears, and reference must be made to the clause containing the oath in which the

words of the statute are exactly repeated. But, in any point of view, it never was the doctrine of our law to require the repetition of the precise same technical terms as are used in the major proposition.* The act of parliament libelled on, contains references in this manner, from one clause to another.

There is another part of the indictment to which I am surprised the opposite counsel did not make an objection similar to that to which I am now speaking. It is in what is called the "at least" clause, where the word *intend* does not occur. But the answer is, that the word is of little value to the prosecutor in the present case, where the express meaning is so clear; and, at all events, the attention must be carried back to what precedes by the words, "*as said is.*" "The said oath or engagement," also, implies the whole of what goes before. But, in case this answer should not be satisfactory, I beg leave to read an opinion delivered from the chair of this Court by your lordship's predecessor, in the case of M^cIntyre, and others, tried for house-breaking, in 1809; and his lordship did no more than illustrate the doctrine laid down by Mr. Hume. I read from Buchanan's reports, page 84. In addressing the jury, the learned judge said: "It was formerly held, that if the public prosecutor did not succeed in proving the whole train of circumstances stated in the indictment, the jury could not convict the prisoners. This was felt to be a great evil; since, in a long and minute statement, it was very often found, that a few particulars were not reached by the evidence; and therefore the act was passed, which declares it sufficient for the public prosecutor to set forth in his indictment, that the panels were guilty actors, or art and part; not tying himself down to prove the whole specific detail of the facts, but simply, that the panels were special actors of the crime, or art and part, that is, accessory to it by participating in it, or giving assistance either before or after the commission. But there is nothing in the act which says in what part of the indictment this charge shall be brought forward. It is usual indeed, to state it in that part of the indictment mentioned by the prisoner's counsel; but if not stated in the first part, it must come in the last part—in the clause beginning with 'at least.' But if it be stated in the first part of the indictment as accompanying the direct charge, it is unnecessary to repeat it in the latter part." From this it appears, that the indictment would be perfectly relevant without this clause at all; and, on the other hand, if this clause be correct, it will supply every other defect of specification in the indictment. In short, it is here entirely for the benefit of the prosecutor. Hume, Vol. 3. 412, &c.

One part of the case still remains unnoticed; that new view of it pleaded by Mr. Grant. I am not sure that I was successful in obtain-

* 3 Hume 804.

ing a distinct conception of the bearing of great part of that argument. But I must hazard one or two remarks upon it before I sit down.

The first remark I shall make is sufficiently obvious, that it was quite contradictory of the argument held by Mr. Cranstoun, who maintained that there is no treason in the case; and your lordships are reduced to the necessity of rejecting the one or the other. That point of view I need not enlarge upon.

Your lordships will next observe, that this statute, upon which the indictment is founded, is not an English statute. It is a Scottish statute to all intents and purposes, when before your lordships in this Court; and I cannot conceive by what operation you can, in interpreting this Scottish act, introduce a rule of the common law of England. I may have misconceived the learned gentleman's argument; but I must state fairly the impression which it left upon my mind. You will observe, that, in this act, there is an express clause extending it to Scotland, and providing how it is to be carried into effect here. "Provided also, that any offence against this act, if committed in Scotland, shall and may be prosecuted, tried and determined, either before the justiciary Court at Edinburgh, or in any of the circuit courts in that part of the united kingdom." And then follows the clause, "That any person who shall be tried and acquitted, or convicted of any offence against this act, shall not be liable to be indicted, prosecuted, or tried again for the same offence or fact as high treason, or misprision of high treason; and that nothing in this act contained, shall be construed to extend to prohibit any person guilty of any offence against this act, and who shall not be tried for the same as an offence against this act, from being tried for the same as high treason, or misprision of high treason, in such manner as if this act had not been made." How it is possible to get over these clauses of the act I know not. From this last clause it clearly appears to have been in the view of the legislature, to make punishable under this act a crime that might have been punishable as treason. Now, if punishable here, it must be by our common forms, and cannot be otherwise. The statute of queen Anne, in cases of high treason, extended to Scotland the English statute law of high treason, and regulated the forms for trials for high treason; but it did not introduce any general principle of the common law of England for the interpretation of Scottish acts of parliament. If this had been a trial for high treason, that act would have required us to have recourse to the statute of Edward 3rd; but this is a trial of a Scottish law offence; and it is impossible to maintain that the statute of queen Anne, by implication, abolished the common law of Scotland as to Scottish law offence—offences, perhaps, of a totally different description from treason. By what rule of law then are you

to proceed in applying this act against the administration of unlawful oaths but by the law of Scotland?

Your lordships do not require to be reminded, that it is possible to try crimes by a lower denomination than the highest by which they may be tried. It happens daily, in the practice of this Court, that the prosecutor selects a lower denomination, notwithstanding the panel might be tried for a higher offence. There is another rule of the law of Scotland which sets the matter at rest—that in no case whatever can there be a second trial for the same crime. That is not the case in England. A man may there be tried over again for the fact, under a different denomination of crime; so that it cannot, under any view of the subject, be prejudicial to the panel to be tried under this act, as he can never again, upon any pretence, be called to account for the same facts charged against him in this indictment. This principle shows how useless the principle of the law of England contended for would be in our Courts, and how inapplicable to our practice.

In the cases of sedition tried in 1794, I rather think in the trial of Skirving, it was laid down by several of the judges, and admitted at the bar, that some of the acts charged amounted to treason, and yet they passed to the jury in a charge of sedition. The objection was not indeed pleaded at the bar, but the fact was in the view of the judges, and particularly, if I mistake not, mentioned by lord Abercrombie, and the Lord Justice Clerk.* It did not therefore pass unnoticed, and yet the judges and lawyers of those days saw no objection to let the charges go to a jury.

I dare say I have omitted many things which I ought to have stated. But there is a great part of the argument on the opposite side of which I purposely omit to take any notice, as not being at all material to the points at issue, or at all likely to affect the result of the case in this Court; in particular, a good deal of general discussion and remarks on the general nature of your lordships' duty in the present case, as being different from your duty in common cases. I trust, my lords, I have said nothing that can tend to introduce into the proceedings of this place, the tone or character of political discussion; but I cannot help remarking, that some things have been said on the other side of the bar of rather too popular a nature, addressed, as they have been, to the unbiassed ears of your lordships; and (though I am confident they proceeded from the best and purest motives), intended, as I must suppose they were, unless it is admitted that they were foreign from the purpose, to influence the grave deliberations of the judges

* 2 How. Mod. St. Tr. 512, 511; see also, Muir's case, *ibid.* 235; Palmer's case, *ibid.* 291; Margarot's case, *ibid.* 623, 626; Sinclair's case, *ibid.* 796, 799, 800.

of a supreme Court of justice, before whom a question is at stake, affecting, on the one hand, the life of a fellow-creature, and, on the other, the safety of the state :—" *quos ab odio, amicitia, ira, atque misericordia, vacuos esse decet.*"

Lord Advocate.—As I have no wish to trespass unnecessarily on your lordships' time, nor to push any case further than it will fairly bear, I content myself with remarking, that I think every thing has been said that is requisite to satisfy you that this indictment is relevant; and I do not feel myself called upon to take up the time of the Court longer.

Mr. Clerk.—My lords, I am happy to think, that I shall not occupy so much of your time as would have been necessary, if my learned friend on the other side had not left untouched a great part of the argument that has been stated for the prisoner at the bar by the counsel who spoke before me.

It seems to me, that Mr. Drummond has not sufficiently attended to the true nature of the question before the Court. The tendency of a great deal of his argument was to show, that the oath libelled on by the prosecutor cannot be understood in an innocent sense, or in any sense consistent with the innocence of parties to it. These are propositions which the prisoner need not contradict in this trial, as it is not now incumbent upon him to show that the alleged oath was altogether free of guilt or criminality. On the contrary, the prosecutor must establish against it the species of criminality imputed in the indictment. It is evident, that an act or deed may be highly criminal, though it does not infer the guilt of high treason; and that a great deal of guilt may be incurred by an oath, although it does not purport or intend to bind the person taking it to commit the crime of high treason. The prosecutor insists, that the purposes of the oath were criminal; and, possibly, he might have said a great deal more than he has said to the same effect. But, it cannot be allowed, that wherever any crime at all has been committed, that must be the crime of high treason. The prosecutor did indeed enlarge a good deal upon the enormity of the crimes intended by the oath. But, in the present case, there is no question about the enormity of any other guilt than the guilt of high treason. The species, and not the enormity of the crime, is first to be considered. The greatest atrocity attending a crime which is not treason, will not convert it into treason.

I must also take notice, that my learned friend, in his endeavours to magnify the guilt of this oath, had recourse to a new doctrine, expressing at the least his own doubts, as to the legal presumption of innocence in favour of a prisoner on his trial, and even denying that there is any such presumption. But even this extraordinary doctrine, though it were sound, would not, by depriving the prisoner of the legal advantages of his defence, convert the crime alleged, how aggravated soever, into

a crime of a different species not alleged, or change the sort of criminality appearing from the oath now in question, into a criminality of a different species, not appearing from the oath. But I am amazed at the boldness, as well as at the novelty of denying the legal presumption in favour of innocence, which, till now, I never heard disputed; and I never was present at any criminal trial in which it was not admitted, either in express terms, or by evident implication, in every argument on either side in the proceeding.

It may be admitted, however, that the oath, though it is not liable to the unfounded and imaginary construction averred by the public prosecutor, was mischievous and criminal in its tendency; insomuch, that the parties to it might have been punished with some severity, under an indictment accurately setting forth the true nature of the offence. But the public prosecutor, instead of bringing the merits of the case to a fair trial, in which it is probable that the general good wishes of the community would have attended him, has not only charged the prisoner with a treasonable intent, but, in the support of this untenable hypothesis, has imputed even to such parts of the oath as are evidently innocent, or at least entirely free of treason, the whole atrocity of that offence. This attempt is hardly a subject for argument. Neither the endeavours to form a brotherhood of affection, nor the endeavours to obtain universal suffrage and annual parliaments, nor the secrecy, were treasonable in themselves. Some of the objects in view were even legal and innocent. A brotherhood of affection is, if I understand it, at least innocent, and it may be a useful and meritorious institution. A plan for obtaining universal suffrage and annual parliaments, is held, by many, to be inexpedient in its nature, while others think it not only expedient, but absolutely necessary. That endeavours may be legally used for obtaining such a change in the law of parliament, will not be denied by any person who understands what is meant by the statement. And though very illegal means may be used for producing so important a change, it does not follow, either that every means used for that purpose are illegal, or that the means, if illegal, must necessarily be treasonable. A resolution of secrecy would not have been illegal; and, though I readily allow that an oath of secrecy was at least questionable, the absurdity of charging it as a treason, or as being an oath to commit treason, must be manifest.

I must repeat, that without any prejudice to the prisoner's defence against this indictment, it may be supposed, that the oath had an illegal or criminal intent. The question upon the nature of the oath is not, whether it imports an obligation of an illegal or criminal nature? but whether, as it is recited in the indictment, it is an oath purporting or intending to bind the person taking the same to commit the crime of high treason? This is the proper state of the question, which ought to be kept steadily

in view. And here it may be observed, that the meaning of the oath can only be discovered from its own terms; and that, as the true meaning is disputed, the same rules of interpretation must be applied that are applicable in other cases, to ascertain the meaning of words; keeping always in view, not only the general rules of interpretation, but those rules, the operation of which is more confined, and which apply more particularly to words in which a criminal intent is alleged.

In such a question as this, the prisoner is entitled to expect, that suspicions and conjectures are to be laid out of consideration; and especially those which do not originate from the terms of the oath itself, but from extraneous circumstances, or allegations as to the views of the person who administered, or the person who took it, or those connected, or alleged to be connected with them in the same undertakings. For if the oath is an offence indictable on the statute, it is so indictable merely in respect of its own proper meaning, or the meaning of its words, and not in respect of any intent in the parties to it, or their supposed confederates, not appearing from the words of the oath, and far less, can suspicions or conjectures as to the intent of such persons, be admitted under this indictment. That an oath indictable under the statute, purports or intends to bind the persons taking the same to commit the crime of high treason, may be proved in two ways; either by the plain and direct words of the oath, where it binds the party clearly and unequivocally, to do that which it is high treason to do; or where it binds them to do that, which, by plain and reasonable inference, is an overt act of treason. But, as suspicions and conjectures, drawn from circumstances that are extraneous to the oath, are inadmissible under an indictment on the statute, so, by parity of reasoning, it is equally clear, that suspicions or conjectures, even where they are drawn from the words of the oath, and from nothing else, are inadmissible. For it must be proved, and not merely suspected or conjectured, from the terms of the oath, that it purports an obligation to commit high treason. Demonstration is required, and not mere suspicion or conjecture; which are not limited by the truth, but get into the mazes of human ingenuity. Wherever these are admitted, the conclusion must be uncertain and arbitrary. This is not authorised by the statute libelled on; which inflexibly requires an oath purporting or intending to bind the person, taking the same to commit treason, and thus evidently requires a certainty arising from the terms of the oath, without a mixture of guesses, suspicions, or conjectures, how plausible soever they may be.

And further, it may be remarked, that if certainty is required as to the import or meaning of the oath it is not sufficient to allege against the prisoner, that an oath, in such terms, may have been misunderstood by the person taking it, and supposed to be an obli-

gation to commit high treason, though it really was not so. For ignorant or illiterate persons may very easily misconceive the meaning of words; and even those who are better informed, may so misconstrue them, as to think their meaning is bad, when, in reality, it is innocent; or, if the meaning is criminal, to think it is treasonable, when it is not treasonable, and when no such meaning was in the mind of other persons to whom the words were used. Under an indictment of this kind, therefore, whether against the party, who administered, or against the party who took the oath, the misunderstanding or misconstruction of other persons can signify nothing. It ought to be considered, whether the terms of the oath do necessarily and unavoidably purport an obligation to commit high treason; and the prisoner is even entitled to maintain, that if the oath can be understood in any other sense, with a probability that it was so understood by him, or by the person taking it, there was no obligation to commit high treason, such as the statute means, and there is no relevancy in this indictment.

And this may be inferred even from the terms of the indictment itself, in which it is alleged, that the oath was administered wickedly, maliciously, and strange to say, *traitorously*. The terms wickedly and maliciously, were necessary to denote the criminal quality of the act, or the wicked intent of the accused; and they exemplify the principle, that no person is to be held as a criminal, where he acted without a criminal intent.

In this case it is not alleged against the prisoner, that there was any treasonable or other wicked purpose, or indeed any particular purpose in view, when the oath was administered. No treasonable, or seditious, or otherwise illegal association is so much as mentioned or hinted at in this indictment. The allegation of the public prosecutor is confined as it ought to be, to the nature of the oath itself, the words of which are set forth as being sufficient evidence of their own criminality, without the aid of extraneous circumstances. Here, then, the prosecutor is at issue with the prisoner, upon the question, whether this oath does plainly and necessarily import an obligation to commit high treason, or is equally criminal with an obligation, in terms express and direct, to compass the death of the king; to levy war against him; or in any other terms, expressing, without ambiguity, an obligation to commit high treason, or to commit a crime that is punishable in terms of this act of parliament. That the oath contains no such obligation, in express or direct terms, is sufficiently obvious. And it is only by a forced and unnatural construction of the words, that the prosecutor has attempted to make out, that there is in the oath, not an express obligation to commit high treason, for that seems to be out of the question, but an obligation to be collected from suppositions of implication and presumption derived from different parts

of the oath, in which, not merely a wicked intent, but the most wicked of all intents on the part of the prisoner is taken for granted, without any evidence or any reason whatever. This is not dealing fairly with a question of this kind. Admitting that all the words of this oath are to be taken into consideration, and combined, where they are capable of being combined, for the purpose of ascertaining whether there exists in the whole, or any part of the oath, a criminal intent, of that species that is alleged in the indictment; it is evident that the conclusion for, or against the prisoner, ought to be gathered from the reasonable inferences or presumptions, and not from exaggerated suppositions of wicked intention, for which there is no foundation in the terms of the oath.

But if this is the nature of the question before the Court, it seems to be of some importance to remark, that a decision upon the relevancy of the indictment is in truth a decision upon the merits of the case, if it shall be proved that the prisoner did actually administer the oath; for your lordships cannot sustain the relevancy of the indictment without being of opinion that the oath purports and intends as the prosecutor says it does.

Your lordships will therefore pause before you pronounce an interlocutor sustaining the relevancy of this indictment; for by so doing, you just, in so many words, give your opinion that the oath has had the bad meaning assigned to it, and can have no other meaning. In other words, you pronounce a verdict against the panel—and yet it must remain a question for the jury, if it shall be proved that the oath was administered—Whether the words of the oath, imported the statutory offence or not? In every other case, you sustain the relevancy of an allegation, of which the import is clear and unequivocal; but by following a similar course here, you confirm the prosecutor's interpretation of an act, in itself ambiguous, to say the least of it; and, in fact, exhaust the main question as to the guilt of the panel.

And therefore, unless your lordships shall be satisfied that the oath necessarily imports the obligation alleged, you must reject the indictment upon the relevancy. For, if the oath do not necessarily import an obligation to commit high treason, the panel administered that oath without being guilty of the crime alleged against him.

And under these circumstances, the judgment of your lordships ought, according to the common rules, to be in favour of the prisoner. Where there is any doubt, it operates in favour of the panel. He is presumed to be innocent until he is proved to be guilty; and that presumption operates upon every doubtful case. *In dubiis benigniora preferenda sunt.* And this maxim applies very strongly to the construction of words alleged to be of a criminal nature. My learned friend applied it, with his usual ability, to the words in the oath respecting the plan of brotherhood, annual elections,

and universal suffrage, and the support of these objects by physical strength.

We are told that these parties had very criminal purposes in view; and therefore, it is to be presumed that nothing innocent was in the oath. But I can never admit the justice of such reasoning. Where a project or engagement of any sort, which does not of itself import that violence is to be used, is to be supported with the whole of a man's power, influence, and even strength, it is to be understood, unless there are plain words from which the contrary should be inferred, that it binds him only to use his utmost lawful endeavours, and for a lawful object. Upon the principles of the prosecutor in this case, any engagement whatever may be construed as an obligation to commit treason.

After reciting the terms of the oath in this indictment, the prosecutor proceeds to put a construction upon them which is evidently faulty. It is faulty in many respects. The allegation is, that the oath purports an obligation to commit high treason. And how is the supposed high treason to be committed? "By effecting, by physical force, the subversion of the established government, laws, and constitution of this kingdom, and especially, by obtaining annual parliaments and universal suffrage, by unlawful and violent means." This is the allegation. The relevancy of this part of the indictment stands upon the nature of that allegation.

Now, in cases of high treason, the averment must be, that a certain *specific treason* was committed—it is not sufficient to say generally that high treason was committed. This proposition cannot be, and it has not been disputed where the crime of high treason itself is charged. But we are told that this is not a trial for high treason. This, however, is nothing at all to the purpose, for the *ratio legis* is equally applicable here, as in trials for high treason. Supposing this were a trial for high treason, the averment in the indictment as to the nature of the oath would not be sufficient, because it does not describe any particular species of high treason—it merely describes a common law treason, which was abolished by the statute of Edward 3rd. Ever since that salutary act was passed, treason has stood entirely upon statute. Every prosecution for treason must be founded upon a particular statute—and it must set forth, specifically, the nature of the treason that is charged.

And, although this is not a trial for high treason, but a prosecution against the panel for having administered an oath for committing high treason, it is evident that the panel is in the same case as if it were a trial for high treason. For, if justice requires that the treason shall be specified in a trial for treason, the same principle must require, that in a charge that a criminal oath was administered, the nature of the crime to which the oath refers must be stated, for otherwise the accused has no notice as to the nature of the crime for which he is brought to trial.

If it had been an obligation to commit murder, would it have been sufficient to say, that it was an obligation to commit a felony? Certainly not. And here, since it is said to be an oath binding to commit high treason, the particular kind of high treason ought, for the same reason, to be specified, as there are many different kinds of treason.

So far we get on in our way, then.—The kind of treason that was to be committed should have been specified, for treasons are distinguishable from one another, as much as murder from robbery, or any other felony. He who compasses the death of the king,* is guilty of one species of treason; he who levies war against him, is guilty of another kind of treason. In the indictment before us, we have no distinction of treasons; we have just an allegation of an obligation to commit treason. The indictment does not mention any one of the statutory treasons.

A complaint was made of my learned friend, that he read only the general words of the clause in the indictment which comes after the recital of the oath, and not the special words which follow. They say he read, "Which oath, or engagement, or obligation to the foregoing purport, did bind, or did purport or intend to bind, the persons taking the same, to commit treason, by effecting by physical force, the subversion of the established government, laws and constitution of this kingdom." And they say, that he should have added, "and especially by obtaining annual parliaments and universal suffrage, by unlawful and violent means." But the omission was altogether immaterial. The omitted words do not contain a charge of any specific treason.

It may be, that the treason meant by the public prosecutor was the levying war against the king. But still it was necessary to let us know by the indictment that such was the prosecutor's meaning, for the oath does not so explain itself, as to import, with certainty, an obligation to commit any crime known in the law.

The words in this part of the minor proposition do contain little more, and nothing different from the old charges of treason, which were long ago abolished by act of parliament, 25th of Edward 3rd. The charge of a common law treason is not known at the present day: and we little expected to have found such a one in any indictment before your lordships. To prove this, we referred to the authority of sir Matthew Hale. Among other singularities in Mr. Home's argument, he denied that this was an authority.

Mr. Drummond.—You are mistaken, I did not say so.

Mr. Clerk.—I think you termed his work a faulty performance; and said he was very little to be followed in a question of this kind, and yet, that he was the person whom we called the great father of the treason law. It is hardly worth while to inform your lordships, that Mr.

Home is mistaken as to the work of which he speaks. Hale's Summary of the Pleas of the Crown, is not a book of authority. But his History of the Pleas of the Crown is a different work, and of the highest authority. Mr. Home founded his observation on a passage in the report of sir John Wedderburn's case in Judge Foster's work. But if he had read the very next sentence, he would have seen the distinction pointed out between the summary and the history. I shall take the liberty of reading a passage from the original preface to the History of the Pleas of the Crown.

"Some years ago there was published a treatise intituled Pleas of the Crown, by sir Matthew Hale; but this was only a plan of this work, containing little more than the heads or divisions thereof, concerning which the editor, in his preface, expresseth himself thus: He (our author) hath written a large work, intituled an History of the Pleas of the Crown, wherein he shows what the law anciently was in these matters; what alterations have from time to time been made in it; and what it is at this day. He wrote it on purpose to be printed, finished it, had it all transcribed for the press in his life-time, and had revised part of it after it was transcribed."

I understand, that a vote desiring the executors of Hale to print the great work on the Pleas of the Crown, to which we have referred, was passed by the House of Commons after his death, a most honourable testimony certainly to the author. And Judge Foster himself, talking of an argument of Hawkins, calls him "a good modern writer on the crown law, the best we have except Hale." I need say nothing more to support the authority of Hale; and if I were in any other place where his work is better known, it would be unnecessary to shew that he is the first of all authorities in questions of treason. His opinion has been over-ruled in one or two points; but his authority is of the highest class.

It is true, that in the history of common law treasons, we find charges of accroaching the royal power, and other vague charges of treason, such as that now before us. But all these have been long exploded. There have been no such charges preferred during the last or present century.

It is very remarkable, that in one of the instances—a most singular instance—in which a charge of that kind was made, and carried into effect—I mean upon the trial of the great earl of Strafford,* who was charged with this general common law treason,—an endeavour to subvert the fundamental laws—so violent was the House of Commons, so timid the House of Lords, and so weak the Sovereign, that a bill was passed charging him almost in the same terms that are employed by the public prosecutor in this case. The bill of attainder states, that the Commons have "impeached Thomas, earl of Strafford, of high treason, for

* 3 How. St. Tr. 1381.

endeavouring to subvert the ancient and fundamental laws and government of his majesty's realms of England and Ireland; and to introduce an arbitrary and tyrannical government against law, in the said kingdoms," &c.*

And the act of parliament for reversing the attainder,† proceeds in the recital: "Whereas Thomas, late earl of Strafford, was impeached of high treason, upon pretence of endeavouring to subvert the fundamental laws, and called to a public and solemn arraignment and trial, before the peers in parliament, where he made a particular defence to every article objected against him, insomuch that the turbulent party then seeing no hopes to effect their unjust designs, by any ordinary way and method of proceeding, did at last resolve to attempt the destruction and attainder of the said earl, by an act of parliament, to be therefore purposely made, to condemn him upon accumulative treason, none of the pretended crimes being treason apart, and so could not be in the whole, if they had been proved, as they were not."

I need enlarge no further on this subject. Your lordships see that lord Strafford was attainted on common law constructive treason, expressed and described in the same vague terms as in this indictment, and contrary to the statutes; and that the reversal proceeded on the ground of the illegality of such charges.

It is therefore impossible to sustain this part of the indictment. It should have been better expressed, had it been a charge of treason; and where the charge is, that an oath was administered to commit treason, the treason must be described as specifically as where treason itself is prosecuted. There is no difference between the two cases. Where a trial is for high treason, the treason must be described. If the trial be for administering an oath to commit high treason, the panel is in danger if you do not describe the treason, or if you describe it as a common law treason. Is he not in the same danger as to the felony, that he would have been as to the treason itself? The same equity applies, and the same regularity of proceeding is due to him in both cases.

You may remove the oath from the treason by many steps. Suppose a charge made, that one sent another to administer an oath to a third person, or that there were several such steps, till at last you came to the charge that an oath to commit high treason was administered, are you not under a necessity at least to describe what was done? It is all one whether you are to be tried for committing the crime, or for sending another to commit it. Had the oath been to commit murder, the murder must be set forth in the same way as in an indictment for murder; had it been to commit theft—in the same way as in an indictment for theft; and the same reason applies in all the cases.

The reason is, it is necessary that the panel should have notice of the crime that is to be charged against him. The charge of administering an oath to commit treason, should specify the treason. If a full description of what is charged against a panel is not given, he has nothing to put him on his guard. I need hardly enforce this upon your lordships' consideration; it has been so long established by practice, that the prosecutor must detail in the indictment every thing he knows.

The prosecutor has not done so here. He has given no account of the *corpus delicti* in this case. It is only stated generally to be the administering an oath binding to commit treason. He should have set forth the kind of treason in legal terms, so that my client might understand it. And, in point of fact, we supposed it to be another sort of treason that was meant, and not that which Mr. Home Drummond has told us it is.

I submit to your lordships, that this, instead of being a description of treason, is just one of those loose constructive allegations that the law has reprobated for many centuries.

What is the construction? Let us look at the oath again. This oath is held by the public prosecutor to be an oath to commit violence. Unless it is an oath to commit violence, he knows he has no case. It is held by the public prosecutor, to be an oath to commit violence by attacking others; and not merely to use strength in defence against the attacks of others. I am sure, that does not appear upon the face of the oath. It says, I will support the same, either by moral or physical strength; but it does not purport to bind any body to employ strength, either lawfully or unlawfully, in attacking other persons. But the public prosecutor takes all this for granted, that the strength to be used is not merely to be used in defence, but also in attacking others. It is not said in the oath, whether the physical strength is strength of body, or strength of mind, or the strength which arises from wealth, or from numerous friends, connexions, or dependents. No explanation is given as to what sort of physical strength it is. But it is taken for granted by the public prosecutor that it means strength of body. It is further taken for granted, that this strength is to be used in combination with that of other persons, although there is not the least ground for that construction of the oath; for it is the oath of a person in the singular number, and there is no reference in it to any exertion of strength in combination with other persons.

It is taken for granted, that this physical strength or force is to be employed not only where it may be lawfully employed, but also where it must be unlawfully employed; and this, as a proposition necessarily arising from the terms of the oath when you take the different clauses altogether. The oath of secrecy, it is said, is intended to cover unlawful purposes; these, it is next inferred, must be

* 3 How. St. Tr. 1518.

† Stat. 13 & 14 Car. 2, c. 29.

violent, treasonable, not purposes of defence, but of attack—not by one individual; but by a great combination of persons, whose attacks would amount to the specific treason which is committed by levying war. Further, it is taken for granted, that the prisoner, along with the supposed persons to be engaged with him, are to use the arms of war, though there is nothing in the words of the oath to justify that *postulatum*. The oath is cautiously worded, and you will not have the worse opinion of it for that. The moral and physical strength are to be used as the case shall require; and every thing is to be taken for granted upon these words. It is to be taken for granted, that the case would require the employment of moral and physical strength; that not only physical strength was to be used, if the case lawfully required it, but if it required it, unlawfully. In short, there are about fifty different constructions, all in this way taken for granted, in order to make out this to be an oath to commit treason.

I ask your lordships, then, whether this is not a constructive treason that is alleged by the public prosecutor, more violent, more uncandid, more unjustly alleged, than ever was alleged against lord Strafford, or any individual who ever suffered the greatest injustice. Could such an allegation ever have been supported at any period of the English government? Can any one case be pointed out, in which so many constructions were necessary, so many malignant purposes to be taken for granted, in order to make out treason? The oath may be highly criminal; but the question is, whether it is so to the extent of being an obligation to commit treason? It is not; and therefore, the indictment of the prosecutor is irrelevant.

Two other points to which I have not hitherto adverted, are of considerable importance in the present case.

It is hardly necessary for me to enforce what was stated to your lordships by Mr. Grant, with respect to the proceedings upon this trial, on the supposition that the indictment involves a charge of treason. I shall assume the different points that were stated by Mr. Grant. They were stated from the English law books; and no answer or contradiction has been given to them. Let us therefore see the inference to be fairly drawn from his argument.

It is true, this is not a trial for treason; but if a charge of high treason is implied or involved in the indictment, it is a case which must be tried according to the treason laws, if a similar case would be tried in England according to these laws. For the treason laws in both countries being the same, every case which has the benefit of these laws in England, must have the benefit of the same laws in Scotland. To deny this proposition, is to deny that the treason laws are the same in the two countries. The law of treason has been imported (if I may use the expression)

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from England into this country. It may have its advantages and disadvantages. I shall not say that the law administered by your lordships' predecessors was not as good as the law of England as to treason. It is enough to say it was different; and that it was considered to be for the benefit of the two kingdoms that their laws should be the same on all points of treason.

Mr. Home did not seem to understand what we have to do with that law. Your lordships, however, will understand this. The law of Edward 3rd, and all the other laws concerning treason, I apprehend, necessarily come to be considered by your lordships, in consequence of the act of parliament declaring in broad terms, that the law of treason shall be the same in both countries. We must therefore inquire, when a crime is charged, whether it is connected with treason. A charge of theft is not connected with it. But here is a charge of administering an oath to commit high treason. That certainly has some connection with treason itself. But, in consequence of the terms of the act of parliament on which the indictment is raised, you are authorised to go on with the trial of the statutory crime. But suppose high treason is charged, or, in making inquiry into the terms of the indictment, it is found to involve a direct charge of high treason, you have been told from good authority, that, if brought into the Court of King's-bench, the Court would observe that there was a charge of high treason, and that the party should be tried in the way, and according to the form of trials for high treason. I ask your lordships if it is possible to dispute that such is the rule of the law of England; and it cannot be disputed that the rule is also part of the law of high treason in this country; for the law declares that treason shall be tried and punished in the same way in the two countries.

According to my friend, Mr. Home, it is neither to be tried nor punished here as in England. *First*, he says, This indictment is to be tried by your lordships according to your ordinary forms of procedure; and, *Secondly*, The crime is not to be tried or punished as high treason. But, if the law of England has been truly stated to me, you will consider the charge brought before you as one of high treason, and follow the same course as would be adopted by the Court of King's-bench. If you are not bound to do so in this case, in what case would you be bound to do so? What applies to one case of high treason, must apply to another.

Then, supposing the general rule to be, that the charge of an inferior crime must merge in a charge of high treason, let us see how it appears that the crime charged in the indictment does not merge in high treason. I am assuming treason as alleged; and I shall show you that it is alleged in this indictment.

By the act of the 52nd of the king, it is declared, that the administering an oath pur-

porting to bind persons to commit treason shall be a felony, and punished as such. If the general rule is, that the lesser crime merges in the treason, the lesser crime of administering the unlawful oath should merge in the treason in every case, where the crime alleged amounts to treason. But there are many cases in which the crime alleged does not amount to treason, and there are therefore various cases to which the act of the 52nd of the king applies; for, although the statute declares the criminal act of administering an oath binding to commit treason, to be punishable as a felony, without benefit of clergy; yet, in a subsequent part of the act, it is declared, that if not tried and punished as a felony, it may be tried and punished as a treason. This is declared by the last clause of the statute.

An oath may be administered purporting to bind to commit high treason, without necessarily involving the person so administering the oath in a charge of high treason. There are many ways of committing high treason. An oath that purports to bind to commit high treason, does not necessarily involve the crime of treason itself. So that here there may appear two sorts of cases to which the act may or may not apply. There may be the case of an oath administered, purporting to bind to commit treason, and no treason at all be chargeable against the parties; and another case, in which, such an oath being administered, the very administration of the oath is an act of high treason. There are cases of both sorts, and it would be endless to enumerate them all.

The law of England must be administered in all cases of treason tried in Scotland. When a crime is charged against an individual under a lower denomination, and it appears from the facts as stated in the indictment, or from the evidence in the course of the trial, that the case is one of treason, the crime of the lower denomination which is charged, merges in the crime of high treason. I cannot make that point clearer than it has been made by Mr. Grant, and I do not mean to argue it again. It seems to be part of the law of England as to *all* crimes, and it is *here* the law as to the crime of treason. In our law, this is not the case as to *other* crimes than treason; and we have many instances in which offences are tried by lower denominations, which might have been tried under higher denominations.

Here a difficulty meets us which may be soon disposed of. We are told, that though, by the law of England, this merging takes place, yet that the law of Scotland is otherwise; and we are asked, What have we to do with the law of England here? Are we not to follow our own law?—We do follow our own rules except in cases of treason. If we are asked, what have we to do with the law of England? I answer, we have to do with it, because it is our law of treason.

And here I beg leave to remind your lord-

ships of the well-known decisions in the civil court on the plea of prescription founded on the English statute passed in the 31st year of queen Elizabeth. It had formerly been decided by the Court of Session, not long after the Union, that the 31st of Elizabeth was no part of the law of Scotland, and that the limitation of penal actions in the case of usury could not be pleaded on it. Afterwards, it was decided, that the 31st of Elizabeth operated as a limitation to these penal actions; but the Court had again returned to its first opinion, and decided against the limitation. But, last of all, the Court, in various cases that occurred some years ago, found that the English statute was to be considered as a part of the law of Scotland, and was pleadable as a limitation of penal actions founded on the act of queen Anne against usury. One of these judgments was affirmed in the House of Lords in the year 1814,* and so the law is settled.

Here, then, was an English statute which originally had no effect in Scotland, and which could not have been pleaded in any Scots penal action, if the act of queen Anne had not made it a part of the law of usury in Scotland as well as in England. It was introduced as part of the Scots law with much difficulty, contrary to former decisions, by a sort of equitable implication, without direct words. And yet we are told by the public prosecutor, in this case, that the most express words, giving us the benefit of the English law of treason, contained in a statute which must be considered as part of the treaty of Union between the two kingdoms, are to have no effect at all. For it is manifest, that, according to the doctrine of the public prosecutor, we have not the benefit of the English laws of treason in any one of those cases, in which the public prosecutor charges, under a denomination lower than that of high treason, a crime of so high a nature that it merges in treason. In other words, the public prosecutor may charge the most odious offences under any denominations he pleases; and, though the charges really amount to treason, the accused has no benefit from those laws, which, in every age, have been held so necessary to protect him against a charge of high treason.

Your lordships will attend to another part of this statute of the 52nd of the king, from which it will be plain to you, that it must have been the intent of the enactment, that, in the case either of the inferior crime stated in that act, of a felony with benefit of clergy, punishable by transportation: or, of the higher crime of felony without benefit of clergy, punishable by death, the true meaning of the act is, that the inferior crime should merge in treason wherever it appears. Suppose an express and positive oath taken to kill the king, or to commit any other horrible treason, and an overt act committed, if you were not to hold

* Surtees and others, Appellants, v. Allan, Respondent, 2 Dow. 254,

that the inferior crime, the felony of taking the oath, merged in the higher crime of treason, it would be in the power of the lord advocate, if a friend of the delinquent, to save him from a trial for the treason, by inflicting upon him only the punishment of transportation. Is it to be supposed, for one moment, that it was the intent and meaning of the act, that a person truly guilty of the most enormous crime that could be committed, should be entitled, by such a manœuvre, to escape the penalty of high treason? It is not conceivable. A friendly prosecution might be brought upon this act of parliament in order to save a traitor's life. It is usual to speak of such a statute as this with reference to people of a low description. But an offence might be committed, under this act, by men of the greatest importance in the land; and, supposing that every thing that was said of the Rye-House Plot, or any the most treasonable in our history, should be realized, and circumstances ten times more aggravated should occur, is it to be conceived that the friends of such parties should be able so far to protect them as to have their punishment made only transportation? To state such a thing is so absurd that you will not listen to it.

If such is not the construction of the act as to the taker of the oath, it is impossible to put that construction as to the administrator of it—for, from the beginning to the end of it, the same words are used as applicable to both. They are both *in pari casu*—only, that as to the one the penalty is death, and as to the other, transportation. And, therefore, upon this argument alone, I should be entitled to say, that if the administrator of the oath is charged with treason, he is entitled to be tried by the treason law.

There is another circumstance to be noticed. There is a clause at the end of the act which says, that if a party should be tried under this act, and should be acquitted, he should not be liable to be again prosecuted under the act for treason. It is not enough that he is brought under trial—he must be convicted or acquitted. That is a strong circumstance, as shewing the true meaning of this act.

The act is extremely for the benefit of the panel in so far as he is only the taker of the oath. Let us see how it stands, if he were the administrator. I am sure there is no difference at all between the penalty of treason, and of felony without the benefit of clergy. It is much the same thing to a man whether he be hanged for treason or for any thing else. The punishment is death, and there is nothing more to be said about it. But there is a difference, whether a man is to be *tried* for treason or for felony. Where he is to be tried upon the act, it is held that he is not to be tried by the treason law. He is not entitled to the great benefits that follow from the forms of trial for treason. It is more difficult to convict for treason, than for any thing else. In this part of Great Britain the difference is not so great at first sight

between the two modes of trial, because here (of which the present trial is an illustrious example), the panel has every benefit of counsel; and, by our law, although almost superseded in some instances, there must be two witnesses in order to establish a fact. I am sure, that, in England, the benefit of being tried by the treason law must be great. At the Old Bailey twenty or thirty may be tried in a short time for felonies, and a trial last only five minutes. A man there may be sent to the gallows before he knows his trial has commenced. Does it make no difference to him, whether he is tried in that method, or with all the benefit of counsel—and by a process under which where the greatest struggles are made for the prisoner—from all which circumstances he has a much greater chance to escape? Does it make no difference to him in this country that he can be indicted only by a grand jury—that, when he comes to be tried, he has peremptory challenges—and that, after all, the jury so selected must be unanimous before he can be convicted? No man in his senses would hesitate in his choice, between such a trial, and the ordinary form of trial, however well regulated it may be. In fact, the advantage of the treason laws in Scotland is still greater than it is in England, for persons who are accused of treasonable practices. Nor need I enlarge on a proposition so completely self-evident. There is, therefore, the greatest hardship to the prisoner, in being deprived of this mode of trial; and the provisions of the law for his safety, in a trial for treason, must not be lost sight of in the present question.

Under these circumstances, I contend, that if there is a charge of treason here, the trial ought to go forward according to the formalities provided for trials for treason in this country.

It is said, there is no trial for treason here. The prosecutor in saying so betrays inconsistency. There may be many oaths to commit treason, which are treason of themselves; and does not the charge in this indictment import, not merely that an oath was administered of the nature of an obligation to commit treason, but that an oath was administered that was in itself treasonable? I do not say that the oath itself was treason, or an oath to commit treason. I have been saying the contrary—that it was not an oath to commit treason, and I think it is far less an oath to commit treason by levying war against the king. But, as it is stated and expressed in the indictment, the prosecutor is not entitled to say it was not treason. He charges it as treasonable on the face of his indictment, and is he entitled to say he was mistaken? We cannot let him off in this way—for, *first*, he tells your lordships that this oath was administered; *Secondly*, that it was an oath binding to commit treason; and then, by way of explanation, he adds, that he means treason by levying war. Look at the words in the indictment itself. If treason is charged at all, it is such, that either to admi-

nister or take an oath to commit it under the circumstances alleged, is itself treason. It is a treason under the 36th of the king. The facts here, and the treason, are so loosely described, that it is merely a common law treason; but can any other meaning be put on the prosecutor's statements, than that there was not merely an oath to commit high treason, but that there was a conspiracy to levy war against the king, for the purposes expressed in the 36th of Geo. 3rd? and therefore the charge is treason. I thought I could have spoken to this point in fewer words, otherwise I would not have troubled you with it at all. But, upon the whole of this case, the prosecutor must withdraw his charge, otherwise you must deal with it as a treason according to the law of England.

What remains is the other objection, pointed out by your lordships; and, I apprehend, no answer whatever has been made on the part of the public prosecutor to that objection. It cannot be answered. I stated formerly, that an allegation of an oath binding the persons taking it to commit treason, is an absurd allegation, because no oath can bind a man to commit treason. But, further, it does not state the crime declared to be punishable by the statute, nor that mentioned in the major proposition of the indictment. It agrees with neither. The words, "as said is," will never cure such a monstrous absurdity. What are we told in answer to this? First, your attention was drawn to the "at least" clause, where it is said, that the oath is one "purporting to bind." The statute says, "purporting or intending;" and thus, the "at least" clause is also bad. So much the worse for the indictment; and I do not see why Mr. Drummond should have bestowed so much time upon that clause. But, how does he cure the other objection? He says that it is to these words, "the said oath, or engagement, or obligation, to the said purport, binding the persons taking the same to commit treason, as said is;" and that these words are surplusage. I deny they are surplusage. That is the very argument that has been so often over-ruled in cases, where an entail has been found insufficient, in consequence of the defect in the resolute clause. In the case of Tillicoultry,* and many other cases, the prohibitory clause was expressed in the most ample manner against selling, contracting debt, and altering the order of succession. But the resolute clause proceeded in some such form as this, "In case of contravention, either by contracting debt, or altering the order of succession, the contravener is to forfeit the estate;" by which form of words, the case of selling was omitted in the resolute clause; and there was no resolute clause applicable to selling. And thus the heir of entail could not be prevented from selling the entailed estate. Against

this conclusion, it was argued, that the resolute clause contained general words, which were sufficient; and that the words "either by contracting debt," &c. were surplusage. But the Court of Session, and the House of Lords, held that the words were not surplusage; and, accordingly, that the resolute clause applied only to contracting debt, and altering the order of succession, and not to selling. It was held that a resolute clause, declaring that contravention, either by contracting debt, or altering the order of succession, was not a resolute clause in the case of selling, although the general words in the clause would have been good, if its meaning had not been restrained by the words which followed, either by contracting debt, &c. which necessarily had the effect to limit the operation of the clause, and to make it inapplicable to selling. In like manner, there are words in this indictment which would have been sufficient, if they had not been restrained by the words, "binding the persons taking the same to commit treason;" and, in the "at least" clause, there are general words which might have been good, if they had not been restrained by the previous words in the indictment, and by the words, "as said is," which necessarily restrain the meaning of the other words, and confine it to the meaning expressed in the previous branches of the minor proposition.

I here conclude my remarks upon this case.

Lord Justice Clerk.—After having heard very able arguments, for seven hours and a half, I wish to know what course of procedure appears to your lordships proper for us to follow.

Lord Hermand.—When any difficulty occurs in this Court, it has always been the practice to order informations. I think there is the strongest reason to take all the assistance we can in this case. I give no opinion at present upon it. I wish, however, more attention paid to what was stated on the other side of the bar. His majesty's counsel might have said more. Some of the counsel find themselves in a new situation in this case. I do find myself so. When I was young at the bar, I read many books of English law; but, since I sat upon the bench, I never had occasion to resort to them. If I give an opinion against the panel in this case, it must be upon strong grounds that I do so.

Lord Gillies.—I concur in the course of proceeding suggested by lord Hermand. One objection appears to me to be fatal to the indictment; that which was noticed by your lordship. In the part of the indictment, where the act charged should be set forth in the most particular manner; where, if there was any mistake in the preceding part, it should have been corrected; where every thing should be full and accurate, the oath is not libelled as *purporting* or *intending* to bind, but the oath is said to be one *binding* to the commission of treason. I have heard no answer made to this

* Jan. 1799: affirmed June 1801; Fac. Coll. No. 99.

objection. I must take the words of the act, from which there is here a material deviation. The word "binding," may either mean, binding in law and morality to commit treason—which could never be meant, being an absurdity; or that the oath binds *in terminis* to the commission of treason. But it appears to me, that the words in the oath do not expressly bind to commit treason. In these circumstances, I should wish the Court to give its opinion on this objection before ordering informations. Whatever your opinion may be on the other points, this objection probably appears to your lordships as it does to me, to be fatal to the indictment. I give no opinion at present on the other points.

Lord Pitmilly.—I am much in the situation of lord Gillies. I should wish informations, or time to consider the argument of to-day, before giving my opinion on it. But, it appears to me clear, that the indictment is liable to the objection which was stated by lord Gillies, and also to that which was argued by Mr. Cranstoun, viz. that it charges that the oath was *traitorously* administered.

The use of the term "binding," instead of "purporting or intending to bind," appears to me to form an objection fatal to the indictment. That clause in the indictment does not appear to be surplusage, though I thought so at first. It is not necessary, in the minor proposition of an indictment to repeat the major; it is not necessary, when murder is charged, and the facts are stated by which the murder is made out, to add "whereby the murder was committed." That would be surplusage. This, however, is not a repetition of the major proposition—it is a substitution of words which do not amount to the crime stated in the major proposition, and it is therefore inaccurate. It does therefore appear to me that the indictment is liable to this objection, and it is not upon that point that I wish for information, but upon the other arguments.

Lord Reston.—I think the objection spoken to is a good one.

Lord Advocate.—I will undoubtedly serve a new indictment; and the informations may be ordered upon the new indictment.

Lord Justice Clerk.—I have not heard the objection obviated; and it appears to me to be fatal to the indictment. I go at present upon the distinction which was noticed; for here the question is not fairly raised as to the relevancy on the general grounds. The words employed in the minor proposition go to a limitation not warranted by the act of parliament. I am not called to say what is the effect of an oath that binds a person to commit treason. I am called to give my opinion on an oath which is averred to *purport* or *intend* to bind a person to commit treason. You have not before you an act of parliament that makes it criminal to bind to commit treason; but you have a statute which makes it criminal to

administer an oath purporting or intending to bind to commit treason; and, therefore, it is impossible for the public prosecutor to say, here was an oath administered on four different occasions, binding to commit treason. That is not the offence which it was the purpose of this act to provide against. I have heard no answer to this objection, and therefore it is difficult to order informations on this indictment.

If the public prosecutor mean to charge only the capital felony mentioned in this act of parliament, he must employ language applicable to that capital felony alone, and the word "traitorously" ought not to be used in this indictment. It ought not to be in it, in order to raise the question which we are called upon to try.

I own the part of the case upon which I should wish for information, is that as to the positive averment as to the rule of the law of England.

If the counsel for the prisoner are right, in stating what would be the rule of construction in England, and in affirming, that, on this occasion, the English rules and forms must be adopted, they must show this in a manner to enable us decidedly to form our opinions on the subject. We do wish for every aid and assistance, if we are to be told that such a mode of proceeding would be adopted in the court of King's-bench, and that it is our duty to follow the same mode of proceeding on this trial. When we are called upon to give our opinions upon the oath, we must proceed upon the general principles of construction, as to the import of the terms of it. I fairly confess, my difficulty is on the point which I have last mentioned.

Lord Gillies.—I wish the informations to be full, upon all the branches of the case.

The proceedings of the Court were entered on the record in the following terms.

"His majesty's advocate represented, that, since the service of the indictment above mentioned, he had raised and executed a new indictment against the panel; the diet whereof also stands adjourned to this day. He therefore moved their lordships to desert the diet of the first indictment, reserving to him to insist upon the second indictment as accords."

"The lord justice-clerk, and lord commissioners of justiciary, in respect of what is above represented, desert the diet of the first indictment against the said Andrew M'Kinley, reserving to his majesty's advocate to insist upon the second indictment, as accords.

(Signed) D. BOYLE, I. P. D."

And the second indictment being called, and "the panel being interrogated thereupon, he answered *Not Guilty*."

After parties procurators had been heard at very great length, upon the relevancy of the indictment,

His majesty's advocate moved the Court to desert the diet of the present indictment *pro loco et tempore*, as he meant to serve the panel with a new indictment.

"The lord justice clerk, and lords commissioners of justiciary, in respect of what is above represented, desert the diet against the panel *pro loco et tempore*.

(Signed) D. BOYLE, I. P. D."

Thereafter a petition was presented to the said lords, in the name of his majesty's advocate, craving a warrant for committing the said Andrew M'Kinley to the castle of Edinburgh, till liberated in due course of law, which was granted accordingly.

COURT OF JUSTICIARY.

JUNE 23, 1817.

Present.

Rt. Hon. David Boyle, Lord Justice Clerk.
Lord Hermand.
Lord Gillies.
Lord Pitmilley.
Lord Reston.

Counsel for the Crown.

Rt. Hon. Alexander Maconochie of Meadowbank, His Majesty's Advocate [afterwards a lord of Session and Justiciary, with the title of Lord Meadowbank.]

James Wedderburn, Esq. Solicitor-General.

H. Home Drummond, Esq. Advocate-Depute.

Counsel for the Panel.

John Clerk, Esq.
Geo. Cranston, Esq.
Tho. Thomson, Esq.
Francis Jeffrey, Esq.
J. P. Grant, Esq.
J. A. Murray, Esq.
James Moncrieff, Esq.
Henry Cockburn, Esq.

Lord Justice Clerk.—Andrew M'Kinley, attend to the indictment against you which is now to be read.

"Andrew M'Kinley, present prisoner in the Castle of Edinburgh, you are indicted and accused, at the instance of Alexander Maconochie of Meadowbank his majesty's advocate, for his majesty's interest: That albeit, by an act passed in the fifty-second year of his present majesty's reign, intituled, 'An act to render more effectual an act passed in the thirty-seventh year of his present majesty, for preventing the administering or taking unlawful oaths,' it is *inter alia* enacted, "That every person who shall, in any manner or form whatsoever, administer, or

cause to be administered, or be aiding or assisting at the administering of any oath or engagement, purporting or intending to bind the person taking the same to commit any treason or murder, or any felony punishable by law with death, shall, on conviction thereof by due course of law, be adjudged guilty of felony, and suffer death as a felon, without benefit of clergy." And further, by section fourth of the said act, it is enacted, "That persons aiding and assisting at the administering of any such oath or engagement, as aforesaid, and persons causing any such oath or engagement to be administered, though not present at the administering thereof, shall be deemed principal offenders, and shall be tried as such; and, on conviction thereof by due course of law, shall be adjudged guilty of felony, and shall suffer death as felons, without benefit of clergy; although the persons or person who actually administered such oath or engagement, if any such there shall be, shall not have been tried or convicted." And further, by section sixth of the said act, it is enacted, "That any engagement or obligation whatsoever, in the nature of an oath, purporting or intending to bind the person taking the same to commit any treason or murder, or any felony punishable by law with death, shall be deemed an oath within the intent and meaning of this act, in whatever form or manner the same shall be administered or taken, and whether the same shall be actually administered by any person or persons to any other person or persons, or taken by any other person or persons, without any administration thereof by any other person or persons:" YET TRUE IT IS AND OF VERITY, that you the said Andrew M'Kinley are guilty of the said crimes, or of one or more of them, actor, or art and part: *In so far as*, you, the said Andrew M'Kinley did, at secret meetings, and on other occasions, at Glasgow, and in the vicinity thereof, in the course of the months of November and December, 1816, and January and February, 1817, wickedly, maliciously, and feloniously administer, or cause to be administered, or did aid or assist at the administering, to a great number of persons, to the amount of several hundreds, an oath or engagement, or an engagement or obligation in the nature of an oath, purporting or intending to bind, the persons taking the same to commit treason, by obtaining annual parliaments and universal suffrage by physical strength or force, and thereby effecting the subversion of the established government, laws, and constitution of this kingdom, by unlawful and violent means; which oath, or engagement, or engagement or obligation, in the nature of an oath, was in the following terms,

or to the following purport:—"In awful presence of God, I, A B, do voluntarily swear, that I will persevere in my endeavouring to form a brotherhood of affection amongst Britons of every description, who are considered worthy of confidence; and that I will persevere in my endeavours to obtain for all the people in Great Britain and Ireland, not disqualified by crimes or insanity, the elective franchise, at the age of twenty-one, with free and equal representation, and annual parliaments; and that I will support the same to the utmost of my power, either by moral or physical strength (or force), as the case may require: And I do further swear, that neither hopes, fears, rewards, or punishments, shall induce me to inform on, or give evidence against, any member or members, collectively or individually, for any act or expression done or made, in or out, in this or similar societies, under the punishment of death, to be inflicted on me by any member or members of such societies. So help me God, and keep me steadfast:"—And more particularly, (1.) at a secret meeting held at the house of Hugh Dickson, then weaver in Abercromby-street, or Calton of Glasgow, or elsewhere at Glasgow, or in the immediate vicinity thereof, you the said Andrew M'Kinley did, upon the 20th day of December, 1816, or upon one or other of the days of that month, or of November immediately preceding, or of January immediately following, wickedly, maliciously, and feloniously administer, or cause to be administered, or did aid or assist at the administering to Peter Gibson, John M'Lauchlane, John Campbell, and Hugh Dickson, all present prisoners in the Castle of Edinburgh, or to one or other of them, and to other persons, whose names are to the prosecutor unknown, an oath, or engagement, in the terms above set forth, or to the same purport, or an engagement, or obligation in the nature of an oath, in the terms above set forth, or to the same purport. And further, (2.) you the said Andrew M'Kinley did, upon the 1st day of January, 1817, or on one or other of the days of that month, or of November or December immediately preceding, at a secret meeting, held in the house of William Leggat, then change-keeper, King-street, Tradestown, in the vicinity of Glasgow, or elsewhere at Glasgow, or in the vicinity thereof, wickedly, maliciously, and feloniously administer, or cause to be administered, or did aid or assist at the administering, to the said Peter Gibson, John M'Lauchlane, John Campbell, and Hugh Dickson; as also, to James M'Ewan, now or lately carding-master at Humphrie's Mill,

Gorbals of Glasgow, and M'Dowall Pate, or Peat, now or lately weaver in Piccadilly street, Anderston, in the vicinity of Glasgow, who, conscious of their guilt in the premises, have absconded and fled from justice; as also, to John Connelton, or Congleton, now or lately cotton-spinner in Calton of Glasgow, or to one or other of them, and to other persons, whose names are to the prosecutor unknown, an oath or engagement, in the terms above set forth, or to the same purport, or an engagement, or obligation, in the nature of an oath, in the terms above set forth, or to the same purport. And further, (3.) you the said Andrew M'Kinley did, upon the 4th day of January, 1817, or on one or other of the days of that month, or of November or December immediately preceding, at a secret meeting, held in the house of Neill Munn, then inn-keeper and stabler, in Ingram-street, Glasgow, or elsewhere at Glasgow, or in the vicinity thereof, wickedly, maliciously, and feloniously administer, or cause to be administered, or did aid or assist at the administering, to the said Peter Gibson, John M'Lauchlane, John Campbell, Hugh Dickson, M'Dowall Pate, or Peat, and James M'Ewan; as also, to James Hood and John Keith, both present prisoners in the Castle of Edinburgh, Andrew Sommerville, John Buchanan, and James Robertson, all now or lately prisoners in the tolbooth of Glasgow, or to one or other of them, and to other persons whose names are to the prosecutor unknown, an oath or engagement, in the terms above set forth, or to the same purport, or an engagement, or obligation, in the nature of an oath, in the terms above set forth, or to the same purport. AND, FURTHER, you the said Andrew M'Kinley did, upon the 5th day of February, 1817, or on one or other of the days of that month, or of January immediately preceding, at a secret meeting, held at the house of John Robertson, then innkeeper and stabler in Gallowgate of Glasgow, or elsewhere at Glasgow, or in the immediate vicinity thereof, wickedly, maliciously, and feloniously administer, or cause to be administered, or did aid or assist at the administering to the said James Hood, James Robertson, Andrew Sommerville, and John Buchanan, as also to James Finlayson, present prisoner in the Castle of Edinburgh, or to one or other of them, and to other persons, whose names are to the prosecutor unknown, an oath or engagement, in the terms above set forth, or to the same purport, or an engagement or obligation in the nature of an oath, in the terms above set forth, or to the same purport. And you the said Andrew M'Kinley having been present,

together with all or part of the persons above designed, at a secret meeting, held for the purpose of administering, or causing to be administered, the said oath or engagement, or for other purposes to the prosecutor unknown, at the house of Alexander Hunter, then change-keeper in the Old Wynd of Glasgow, on the 22nd day of February, 1817, and having been there apprehended, conscious of your guilt in the premises, did assume the false name of John Brotherstone; and having been taken before Robert Hamilton, Esquire, Sheriff-depute of Lanarkshire, you did, in his presence, at Glasgow, on the 28th day of February, 1817, and on the 11th day of March, 1817, emit and subscribe two several declarations; and having been taken before Daniel Hamilton, Esquire, one of the Sheriffs-substitute of Lanarkshire, you did, in his presence, at Glasgow, on the 4th day of March, 1817, emit and subscribe a declaration; and having been taken before Hugh Kerr, Esquire, one of the Sheriffs-substitute of Lanarkshire, you did, in his presence, at Glasgow, on the 5th day of March, 1817, emit and subscribe a declaration; and having been taken before James Wilson, Esquire, Sheriffs-substitute of the county of Edinburgh, you did, in his presence, at Edinburgh, on the 18th day of March, 1817, emit and subscribe a declaration;—all which declarations, being to be used in evidence against you at your trial, will for that purpose, be lodged in due time in the hands of the Clerk of the High Court of Justiciary, before which you are to be tried, that you may have an opportunity of seeing the same. At least, times and places foresaid, the said oath or engagement, or an oath or engagement in the foregoing purport, or an engagement or obligation in the nature of an oath, in the terms above set forth, or to the foregoing purport, purporting or intending to bind the persons taking the same, to commit treason, as said is, was wickedly, maliciously, and feloniously administered, or caused to be administered, as aforesaid; and some person or persons did aid or assist at the administering thereof; and you the said Andrew M'Kinley are guilty of the said crimes, or of one or more of them, actor, or art and part. All which, or part thereof, being found proven by the verdict of an assize, before the Lord Justice General, the Lord Justice Clerk, and Lords Commissioners of Justiciary, you the said Andrew M'Kinley ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming.

"H. HOME DRUMMOND, A. D."

LIST OF WITNESSES.

1. *Robert Hamilton*, Esquire, sheriff-depute of Lanarkshire.
2. *Daniel Hamilton*, Esquire, one of the sheriffs-substitute of Lanarkshire.
3. *Hugh Kerr*, Esquire, one of the sheriffs-substitute of Lanarkshire.
4. *James Thompson*, clerk to John Drysdale, sheriff-clerk of Lanarkshire.
5. *Matthew Burns*, clerk to George Salmond, procurator-fiscal of Lanarkshire.
6. *John Leslie*, clerk to the said John Drysdale.
7. *Joseph Reid*, writer in Glasgow.
8. *George Salmond*, procurator-fiscal of Lanarkshire.
9. *James Wilson*, Esquire, one of the sheriffs-substitute of the county of Edinburgh.
10. *Archibald Scott*, procurator-fiscal of the county of Edinburgh.
11. *James Currie*, writer, Sheriff-clerk's office, Edinburgh.
12. *Alexander Calder*, sheriff-officer in Glasgow.
13. *Alexander Hunter*, now or lately change-keeper, Old Wynd of Glasgow.
14. *Marion M'Laren*, or *M'Lachlan*, now or lately servant to the said Alexander Hunter.
15. *John Robertson*, now or lately inn-keeper and stabler, Gallowgate Glasgow.
16. *Agnes Campbell*, wife of Thomas Dow, now or lately steam-boiler maker and smith at Girdwood and Company's foundry in Hutcheson-town, in the vicinity of Glasgow.
17. *Janet Rentoul*, now or lately servant to Neill Munn, now or lately inn-keeper and stabler in Ingram-street, Glasgow.
18. *Alison Wilson*, now or lately servant to the said Neill Munn.
19. *Matthew Fyfe*, now or lately spirit-dealer in Wilson-street, Glasgow.
20. *Jean Boyd*, wife of the said Matthew Fyfe.
21. *William Leggat*, now or lately change-keeper, in King-street, corner of Centre-street, Tradeston, in the vicinity of Glasgow.
22. *John Mitchell*, weaver, now or lately residing in Wilkie's Land, Charles-street, Calton of Glasgow.
23. *Hugh Dickson*, present prisoner in the Castle of Edinburgh.
24. *Peter Gibson*, present prisoner there.
25. *John M'Lachlane*, present prisoner there.
26. *James Finlayson*, present prisoner there.
27. *John Campbell*, present prisoner there.
28. *James Hood*, present prisoner there.
29. *William Simpson*, lately prisoner in the castle of Edinburgh, and now or lately change-keeper in Main-street, Anderson-ton, in the vicinity of Glasgow.

H. HOME DRUMMOND, A. D.

LIST OF ASSIZE.

County of Edinburgh.

David Gray of Snipe.
 John Thomson of Burnhouse.
 George Jeffrey, grocer in Dalkeith.
 Richard Muschet, merchant there.
 James Mutter, farmer, Longside.
 James Nibbie, farmer, Easter Cowden.
 David Thomson, farmer, Wester Cowden.

County of Haddington.

John Anderson of Whitburgh.
 Thomas Mitchell of Westbarns Mains.
 Charles Crawford, farmer, East Fortune.
 Mark Turnbull, farmer, Upper Bolton.
 James Wilson, farmer, Bolton.

County of Linlithgow

William Wilkie of Magdalens.
 William Shillinglaw of Boghead.
 Andrew Mitchell, farmer at Kinneil Kerse.
 John Ross, farmer at Borrowstown.
 John Thomson, farmer at Inneravon.

City of Edinburgh.

Richard Johnston, banker in Edinburgh.
 James M'Kensie, goldsmith there.
 Robert Green, watchmaker there.
 Robert Slater, dye-cutter there.
 William Neilson, painter there.
 James Yule, baker there.
 Andrew Grierson, tailor there.
 Patrick Main, painter there.
 John Lauder, merchant there.
 Samuel Hopperton, grocer there.
 John Brown, merchant there.
 Robert Mitchell, merchant there.
 William Lockhart, tinsmith there.
 John Sinclair, seed-merchant there.
 William Scott, pewterer there.
 Alexander Johnston, ironmonger there.
 George Gray, baker there.
 Thomas Edmonstone, ironmonger there.
 William Murray, baker there.
 John Smith, spirit-dealer there.
 Thomas Hunter, merchant there.

Town of Leith.

John Sharp, wine-merchant in Leith.
 Archibald M'Dowall, merchant there.
 James Ogilvie, wine-merchant there.
 Robert Strachan, merchant there.
 Robert Sanderson, cooper there.
 Robert Branton, merchant there.
 John Calder, grocer there.

D. BOYLE.
 GEO. FERGUSON.
 DAVID DOUGLAS.

Lord Justice Clerk.—What do you say to this indictment? Are you guilty or not guilty of the charges contained in it?

Andrew M'Kinley.—Not guilty.

Lord Justice Clerk.—When the case was formerly before us, a full and very able dis-

cussion took place. There is some variation between the present and the former indictments, but the crime charged in them is one and the same; and, therefore, the resolution then formed, your lordships will now carry into effect, by ordering informations on the relevancy of the indictment.

Lord Advocate.—I think it proper to state, that my object is to bring this case before a jury as speedily as possible; and knowing, from what was formerly thrown out, that when an interlocutor should be pronounced, your lordships would direct informations should be given in, I have had the information for the crown prepared, and actually printed, and it will be ready to be thrown off without delay. For the purpose of despatch, and in order that no delay may take place in bringing on this trial, I crave your lordships to direct, that the information for the panel shall be ready within a short time from this date.

Lord Justice Clerk.—As there was a very full argument on the relevancy in the case of Edgar, where the indictment was similar to the indictment served on this panel; and, as the second pleading followed out the same argument as the first, we can have no difficulty in ordering the informations to be given in at an early period.

Mr. Cockburn.—Mr. Moncrieff, notwithstanding his numerous avocations, has undertaken to write the information for the panel. In fixing the period for giving in the informations, you will consider he has not yet seen the paper given in for the other party. The last diet was about three weeks ago; so that the prosecutor, knowing the nature of his indictment, has virtually had three weeks to prepare his information. Therefore, as three weeks have been taken by the crown counsel, you must give us an equal period to prepare the information for the panel.

Lord Justice Clerk.—The indictment was served three weeks ago.

Lord Advocate.—Your lordships will also observe, that the parties heard each other's pleadings. I am happy, both for the sake of the panel and the law, that Mr. Moncrieff is to write the information on the other side. But, if Mr. Moncrieff cannot, from his other avocations, accomplish his task within a short period, there are other seven counsel for the panel, of the first eminence at the bar, and surely, by this great band of counsel, the paper might be prepared without delay.

Mr. Cockburn.—If each took a page in turn, it might soon be done. There are three counsel for the Crown, and, from the statement we have heard, I presume each may have taken a week in the preparation of their paper. But, as Mr. Moncrieff is himself to write the whole of the information for the panel, three weeks must be given to him.

Mr. *Solicitor General*.—There are eight counsel for the panel, and when they select a particular one from among themselves to write the information, they are not entitled to get delay on account of the numerous avocations of the counsel so selected. The circumstance, therefore, of that counsel's avocations, cannot be listened to as any excuse for asking delay in preparing the information for the panel.

Lord *Hermant*.—I cannot distinguish between one counsel and another in doing his duty.

Lord *Justice Clerk*.—If this were the first time of ordering informations on the indictment your lordships would naturally give full and competent time to prepare them. But this case stands very particularly situated. We have had most full and able debates upon the relevancy; but, from the importance of the case, you thought it right to have the argument stated in writing. The Court does not wish more verbal discussion; and, the only question is, now that the diet has arrived, What is a competent time to give for preparing the information? The panel has, again and again, been brought here, from circumstances which we could not help; and we are not to allow the case to be protracted. Let the information for the panel be given in ten days hence, or this day fortnight.

Mr. *Cockburn*.—From Mr. Moncrieff's situation, that is giving him no time at all. He cannot begin before Wednesday, as he has not seen the other parties' pleadings. Four or five days must pass before he does so, and then he has not four or five days to write.

Lord *Hermant*.—It is a very different thing, after hearing these pleadings, to write the information, from what it would have been had these not taken place.

Lord *Justice Clerk*.—The former debate has been taken in short hand, and furnished to the judges.

Lord *Gillies*.—The shortest time possible should be fixed upon.

Lord *Hermant*.—I think that better for the panel.

Lord *Gillies*.—We are to consider the informations this day fortnight. If we find that inconvenient, by a short minute, the consideration can be delayed till the Wednesday following.

Mr. *Cockburn*.—Is it to be this day fortnight or three weeks? The trial might be postponed a week.

Lord *Gillies*.—The collection of the witnesses and jury should be considered.

Lord *Justice Clerk*.—I have no wish to press my own opinion, if any of your lordships think differently.

Lord *Reston*.—I think ten days sufficient to allow for the information; but I have no objections to longer time being granted. I have no objection to an indulgence to Wednesday fortnight on both sides.

INTERLOCUTOR.

"The Lord Justice-Clerk and Lord Commissioners of Justiciary, ordain parties procurators to give in informations upon the relevancy of the indictment, to the Clerk of Court, in order to be recorded; the prosecutor to give in his information on or before Thursday next, and the procurators for the panel to give in his information on or before the ninth day of July next.—Continue the diet against the panel till Monday, the 14th day of the said month of July, and ordain all concerned to attend, each under the pains of law; and the panel, in the mean time, to be carried back to the Castle of Edinburgh."

June 26, 1817.

INFORMATION

FOR

ALEXANDER MACONCHIE, *Esq. of Meadowbank, his Majesty's Advocate, for his Majesty's interest,*

AGAINST

ANDREW M'KINLEY, *present Prisoner in the Castle of Edinburgh—Panel.*

After hearing counsel a second time* on the relevancy of the charges against the panel, the first argument in the case of William Edgar having been equally applicable to the present, your lordships has still expressed a wish to have an opportunity of considering a written pleading before delivering your opinions. It was then suggested, that it would be better to serve the panel with a new indictment, before writing the informations, in consequence of some verbal objections to the indictment, then depending, which had occurred to the Court. The course pointed out by your lordships has accordingly been followed. The diet of the former indictment having been deserted, another was immediately served; and an interlocutor, ordering informations, was then pronounced†; in obedience to which, this paper is presented.

After the consideration that has been already given to the case, the prosecutor cannot flatter himself with the hope of stating any new views of the subject that are likely to appear of much importance.

* June 2, 1817. † June 23, 1817.

Neither does he think he would be justified by any inducement of novelty, in abandoning those grounds on which he long ago formed his opinion, that the charge against the panel ought to pass to an assize; an opinion from which, as yet, he has seen no cause to depart. He conceives, that he will best discharge his duty, by pointing out those leading views of the case on which he expects the decision will ultimately rest; and will not fatigue your lordships or himself, by entering upon the endless *minutiae* of verbal criticism, or expatiating on the boundless field of general discussion, which the combined efforts of so many learned men have employed in preventing, or at least delaying for a time, the trial of the offence charged against the panel.

The statute libelled on is of recent origin, and was intended to check a great and alarming evil, which, of late years, has led to many crimes and disorders, and even to insurrection and rebellion, in different parts of the united kingdom. Conspiracies against the lives and property of others, and against the whole existing order of society, were continually breaking out, which had all of them certain marked features of resemblance, and all ultimately tended to the same end. Those conspiracies were dangerous, in proportion as they were systematic; and it was naturally thought that the foundation of the evil would be removed, if the bond of union could be destroyed by which they were formed and held together. Accordingly, the legislature declared it a capital crime to administer oaths of a particular description, this being invariably the engine of mischief by which the vicious and ignorant were united in the prosecution of their own objects, or in the blind advancement of the more dangerous schemes of others. For many years, the country has not been altogether free from such combinations; and, although dormant for a time, they have always been revived on the recurrence of any general discontent or distress. In the circumstances of the present time, they have found unusual encouragement; and even the sober and calculating spirit of the people of this part of the kingdom has not saved them from the general delusion. An association of desperate men was formed; who entertained sanguine expectations that the time was come for a new order of things, when they might participate in the power and privileges of the higher order of the state, and share the possessions of their wealthy and more industrious neighbours. The particulars of the rise and progress of this conspiracy, it would not only be foreign from the present purpose, but improper and inexpedient to detail; and, in truth,

the description would have little to recommend it for interest or novelty. Conspirators of all ages and countries have a striking resemblance to each other: "Bonis invident, malos extollunt; vetera odere, nova exoptant; odio suarum rerum mutari omnia student; turbâ atque seditionibus sine curâ aluntur."

The proceedings of those persons were perfectly well known to his majesty's government; and, in order to preserve the tranquillity of the country, it at length became necessary to interrupt their labours, before their schemes burst forth into mature and active operations. The contamination, however, had spread to a considerable extent, and had struck deep root in the hearts and affections of the diseased part of the community; and though checked for a time, by the disclosure and the fear of its consequences, there was no doubt that, upon the first opportunity, the same, or a similar plan of operations would be resumed, with increased vigour and activity.

Under these circumstances, it appeared to his majesty's advocate, that the proper course of his public duty was, to enforce the provisions of the statute, which was passed for the express purpose of repressing such disorders. The panel and another individual were accordingly indicted to stand trial for the statutory offence of "administering an oath, purporting or intending to bind the persons taking the same to commit treason."

[*Construction of the oath.*]—The first question that naturally arises upon this charge is, whether the oath alleged to have been administered by the panel did purport or intend to bind the persons to whom he administered the same to commit treason. The prosecutor is not bound by the statute to set forth the terms of the oath, but only the purport of it. And it is not necessary that the oath should bear, in express terms, the guilty purpose, or should have any meaning at all, provided only it be intended and understood by the persons administering and taking it to have that end in view. It is plain, that a few letters of the alphabet, or any words of an innocent or opposite meaning, the oath of allegiance itself, might have been so administered and taken, as to constitute the statutory crime. The prosecutor is not, however, reduced to such a narrow case as this, for he produces the words of the oath itself; and undertakes to satisfy your lordships, and every reasonable person who reads it, that the oath does expressly mean to bind the persons taking the same to commit treason. It therefore seems unnecessary to say any thing on the construction put by the panel on the phrase "intending to bind," by which he ascribed *intention* to

the oath, and not to the person; as if there were any sense in personifying an oath, and giving it the powers of the understanding and the will.

Much eloquence and ingenuity have been displayed in perverting the plain sense and meaning of the words of the oath, and endeavouring to construe out of them a sense and meaning which they are not calculated to convey, and which never entered into the imaginations of those who used them. The literal construction of the oath was not for a moment insisted on, but a general declamation was delivered upon the indulgence that ought to be shown to persons accused of crimes, in a favourable interpretation of every question of law, and of every matter of fact, which is brought into discussion in a criminal trial. The prosecutor did not object to any rule of interpretation, within the utmost bounds of reason, that might be followed in the construction of this oath; but he thought it his duty to protest against the whole doctrine, as applicable to a question of relevancy, when the very first act of the mind of the judge, and of every person engaged in the discussion, is to assume the truth of the whole facts as charged. In this stage of the process, every thing is presumed to be done wickedly and maliciously, as libelled. And the question is, if all these things are as stated by the prosecutor, ought they to be followed by punishment? So clear is this rule, that things in themselves of the most innocent description, if libelled to be done wickedly and maliciously, or for the accomplishment of some illegal purpose, are daily found relevant to infer the pains of law. It was therefore maintained, that, in construing this oath, the purpose for which it was intended, and the whole circumstances under which it was administered, were to be taken into view; not that the prosecutor conceived it necessary for the case, to search for matter of relevancy beyond the words of the oath itself, but because he thought himself entitled and called upon to maintain the plain rule of law, as applicable to every question of the kind.

The words of the oath are already too familiar to the Court, and are in your lordships' hands in the indictment; so that it is unnecessary to quote them in this place. Independent altogether of the considerations above mentioned, it is submitted, that it is impossible to construe out of the oath, standing by itself, the reservation of illegality contended for by the panel. It is an unambiguous obligation to use all moral and physical strength, or force, that may be necessary for the end in view; and all attempts to prove the contrary must appear hopeless to

every unbiassed mind. Forced constructions, fanciful illustrations, and vague analogies, will not avail against the plain meaning of the words, as they would be understood in the ordinary affairs of life. It was justly observed, that grammatical niceties were not to be employed in interpreting the meaning of persons in the lower orders of society; but it was afterwards said, that "*to support endeavours*" to obtain any thing is a solecism; because, to support endeavours is nothing else than to endeavour. Now, this is to apply one of the strictest rules of grammatical construction to the words of "*these ignorant people*," as in the very next sentence they were called; and to apply it to the effect of drawing the conclusion, that, because they did not express themselves according to the correct rules of chaste composition, their words cannot bear the meaning which they are expressly intended to convey. It was argued, that the words "*the same*" may be the relative to several antecedents; and that the panel is entitled to have his choice, and to select that antecedent which is best calculated to convert the whole oath into nonsense. The prosecutor would feel ashamed, in any case, to enter into a serious discussion of such "*unseemly niceties*," so little congenial to the liberal spirit of our criminal law. In the present, nothing can be more trifling or more useless, where it is so plain that there is but one antecedent, viz. the "*endeavours to obtain*," to which, by every rule of common sense and sound construction, this relative can apply.

The next piece of violence that was done to the plain meaning of the oath, was the attempt to make out that the words "*physical strength*" are to be understood individually, and not collectively; and a distinction was attempted to be made between "*force*" and "*strength*." This argument is now in a great measure abolished by the introduction of both the words into the new indictment: as, according to the best information that has been obtained, they were not only used synonymously, but promiscuously. But the truth is, that the observation never had in itself either force or strength; for "*physical strength*" is unhappily one of the most familiar ideas and most common expressions among the lower orders of politicians, in speaking of the force and power of numbers, when brought into open resistance to the ruling powers; and such common use of the expression is the fairest rule by which it can be interpreted in the place where it stands. This "*physical force*" is nothing else than the power to be employed in subduing the obstacle or contrary force by which universal suffrage is to be prevented; that is to

say, the open violence by which this public purpose is to be accomplished, and the government overturned. It is vain to say that physical strength may be exerted lawfully, and to give strange examples of its legal exercise. The question is not what *may* be the meaning of any insulated words in the oath, but what is their meaning where they stand. Now, it is plain, upon the face of the oath, that the whole powers of body and mind of the conspirators were intended to be called forth, not only without limitation, but with a distinctly announced generality, that was to admit of no exceptions whatever. It was indeed attempted, on the part of the panel, to construe out of the oath a reservation of illegality, than which nothing could be more contrary to the plain sense and meaning of the words.

The prosecutor apprehends that the whole of this argument upon the meaning of the oath received a decisive answer in the proposal to insert into it such unambiguous words as would expressly convey the meaning which it is attempted to draw from the words as they stand. The result of this experiment plainly is, to make the oath contradict itself, and appear palpably absurd; whereas, if the argument on the other side of the bar had been well founded, it should have reconciled any apparent contradiction, and made the whole consistent, distinct, and intelligible.

It would be an easy matter to illustrate the fair meaning of the oath at length, and to expose the gross fallacy and futility of every attempt to put any other construction upon it than what it expressly bears; but the prosecutor cannot doubt but such a task would appear as useless to your lordships as it does to himself. His wish is to have that meaning put upon the words which every man of common sense would put upon them in the daily intercourse of life; and he has no doubt that it is by this test alone that your lordships will try them. Indeed, he has been clearly of opinion from the beginning, that all argument upon the meaning of the oath, upon either side of the bar, is totally useless, and will produce no effect upon the mind of any unprejudiced man of common sense, who can read the words before him.

If this be the sound view of the case as to the construction of the oath, standing by itself, what must your lordships think of it, when considered with reference to all the circumstances of guilt under which it is charged to have been administered in this indictment? It seems unnecessary to do more, than shortly to advert to these circumstances. They were all mentioned in the debate; and no answer was attempted to be made to their relevancy in

the interpretation of the oath. The most remarkable, perhaps, of the whole is the administration of the oath at *secret meetings*, which is no more consistent with innocent intention, than the clause of secrecy at the conclusion of the oath, which was expressly admitted to be of itself a punishable offence. Secrecy is thus admitted to be an index of a guilty purpose; and it is of little moment whether it is admitted or not, as its existence under such circumstance is irreconcilable with innocence. It will always be remembered also, that the secrecy in this case was of no ordinary description, as it was a standing rule of the society to inflict the punishment of death upon those who revealed their secrets;—an amiable feature of the whole transaction, and which affords a pleasant commentary on the panegyric that was pronounced, at the first debate, on the “brotherhood of affection,” in which it was said to be so becoming that all the subjects of this country should dwell together in unity! Indeed, it may be observed, by the way, that it is impossible to find a better commentary upon the whole oath than this conclusion affords, or a better answer to the pure motives that were attempted, with so much ingenuity, to be extracted from the beginning of it:—

——— Ut turpiter atrum
Desinat in piscem mulier formosa
superne.

The extensive nature of this “brotherhood” was totally forgotten in the argument as to the individual application of the term “physical strength;” or rather, this argument, like all the rest upon the meaning of the oath, was founded on a separate consideration of each member and clause, independent of all the others. Still less was it thought necessary to take the slightest notice of the important fact stated in the libel, that the oath was actually administered to several hundred persons, whose joint endeavours were of course to be used for the promotion of the common end. It will also be remembered, in the construction of the oath, that it is libelled to have been administered to several persons; who, conscious of their guilt in the premises, have absconded and fled from justice.

The truth of all these facts must be taken for granted in the question of relevancy; and must, therefore, be taken into view in this stage of the process in judging of the meaning of the oath. It will also be kept in view, that the oath is alleged to have been “wickedly and maliciously administered,” and did “purport or intend to bind the persons taking the same to commit treason, by obtaining annual parliaments and universal suffrage

by physical strength or force;" and it is submitted, that if the words of the oath are at all susceptible of the meaning put upon them by the prosecutor, and *may* bear that meaning, your lordships are bound to give him credit for the truth of that construction which he puts upon them. It is quite a mistake to say, that he must show, in this question of relevancy, that the words *must of necessity* bear the criminal meaning. If, indeed, the criminal meaning be plainly a forced construction, and one which they cannot reasonably bear, your lordships might hesitate as to sending them to a jury, unless it were alleged that they have a hidden or different meaning from what they express. But if the meaning be neither forced nor unnatural, or if it be at all a reasonable, or even possible construction, the prosecutor is entitled to the verdict of a jury on the charge, and to demand the assumption of the truth of every allegation he makes in the preliminary stages of the process.

[*That the oath binds to commit treason.*]—

But it is said, admitting the argument to have failed, that the oath is entirely innocent, it by no means follows, however dangerous or mischievous it may be supposed to be, that it binds the persons taking the same to commit treason. It is said, that it does not necessarily purport any such engagement; and the same line of argument is had recourse to here, that was previously adopted, in order to persuade your lordships that the oath is totally innocent. It is unnecessary to recur to what has been said above. If the panel has failed, as the prosecutor cannot doubt he has, to persuade your lordships to construe out of this oath a reservation of illegality; and if the prosecutor be right in believing, that every man of common sense, who has these words placed before him on any ordinary occasion, will at once say that they are nothing else than an obligation to accomplish the ends in view by every means in the power of the parties without reservation or qualification whatsoever, and especially by the whole moral or physical force in their power, or at least as much of it as might be necessary,—then the simple question remains,—Supposing these means to have been brought into action, and particularly supposing their physical force to have been brought into action for accomplishing the particular purposes in view, would this have amounted to the crime of treason? Now, upon this point, it is submitted to be clear, that the accomplishing, or attempting to accomplish, any public purpose by force, especially by the force of numbers, such as the alteration of any law, or any branch of the constitution, more particularly when the

alteration is of such a nature as infer the destruction of the whole frame and texture of the government, is, by all the authorities, high treason. But upon this it seems unnecessary to enter; and, indeed, the prosecutor is unwilling, and feels it altogether unnecessary, to detain your lordships with any remarks of his upon a subject upon which there are so many great authorities, all agreeing with each other.

In quoting these authorities at length, he is only following the example set before him by the English Judges on similar occasions. "I am peculiarly happy," says lord Loughborough, in the address to the grand jury in the case of lord George Gordon, "that I am enabled to state the law on the subject, not from any reasonings or deductions of my own, which are liable to error, and in which a change or inaccuracy of expression might be productive of much mischief; but from the first authority, from which my mouth only will be employed in pronouncing the law. I shall state it to you in the words of that great, able, and learned judge, Mr. Justice Foster, that true friend to the liberties of his country."*

The following are the passages at length, and in the order in which they stand in the original, which lord Loughborough quotes; and, it will be observed, that Mr. Justice Foster begins the chapter with a dissent from some of the expressions of lord Hale, which were so much dwelt upon at one period of the debate, and the present application of which has called forth so many panegyrics upon this author in the course of these discussions. Your lordships were even told, that, except Coke, lord Hale is the only author allowed to be cited as an authority in an English Court,"—a position too extravagant to require a commentary. But it is a singular circumstance, that the English judges, on such occasions, do not appear to refer at all to this "great father of the law of treasons," as he was termed in the debate; and that the authority to which they do refer commences with a dissent from his opinions. Not that the prosecutor is ignorant of the great name and venerable authority of that excellent person, but he wishes to point out to your lordships, that his opponents have been somewhat too extravagant in their admiration of his authority, as applicable to the present case; and that it is usual to look to more recent expositions of the law, composed in better times.

"Lord Chief-Justice Hale,† speaking of such unlawful assemblies as may amount to a levying of war within the 25

* 31 How. St. Tr. 490.

† Foster's Crown Law, p. 208.

Elizabeth, c. 3, taketh a difference between those insurrections which have carried the appearance of an army, formed under leaders, and provided with military weapons, and with drums, colours, &c. and those other disorderly tumultuous assemblies, which have been drawn together, and conducted to purposes manifestly unlawful, but without any of the ordinary shew and apparatus of war before mentioned.

"I do not think any great stress can be laid on that distinction. It is true that, in case of levying of war, the indictments generally charge, that the defendants were armed and arrayed in a war-like manner; and, where the case would admit of it the other circumstances of swords, guns, drums, colours, &c. have been added. But, I think, the merits of the case have never turned singly on any of these circumstances.

"In the cases of Damaree and Purchase which are the last printed cases that have come in judgment on the point of constructive levying war, there was nothing given in evidence of the usual pageantry of war;—no military weapons—no banners or drums—nor any regular consultation previous to the rising. And yet the want of those circumstances weighed nothing with the Court, though the prisoner's counsel insisted much on that matter. The number of the insurgents supplied the want of military weapons; and they were provided with axes, crowes, and other tools of the like nature, proper for the mischief they intended to effect:

"Furor arma ministrat."

"Sect. 1.—The true criterion, therefore, in all these cases, is *quo animo* did the parties assemble? For, if the assembly be upon account of some private quarrel, or to take revenge of particular persons, the statute of treasons hath already determined that point in favour of the subject."

"Sect. 3.—But in every insurrection which, in judgment of law, is intended against the person of the king, be it to dethrone or imprison him—or to oblige him to alter his measures of government—or to remove evil counsellors from about him—these risings all amount to levying war within the statute; whether attended with the pomp and circumstances of open war or no. And every conspiracy to levy war for these purposes, though not treason within the clause of levying war, is yet an overt act within the other clause of compassing the king's death. For these purposes cannot be effected by numbers and open force without manifest danger to his person.

"Sect. 4.—Insurrections, in order to throw down all enclosures, to alter the established law, or change religion, to enhance the price of all labour, or to open all prisons; all risings in order to effect these innovations, of a public and general concern, by an armed force, are, in construction of law, high treason, within the clause of levying war. For, though they are not levelled at the person of the king, they are against his royal majesty; and, besides they have a direct tendency to dissolve all the bonds of society, and to destroy all property, and all government; too, by numbers, and an armed force. Insurrections likewise for redressing national grievances, or for the expulsion of foreigners in general, or indeed any single nation living here under the protection of the king, or for the reformation of real or imaginary evils of a public nature, and in which the insurgents have no special interest; risings to effect these ends by force and numbers, are, by construction of law, within the clause of levying war; for they are levelled at the king's crown and royal dignity."

"Upon the trial of Damaree, the cases referred to before, in sections 4th and 5th were cited at the bar; and all the judges present were of opinion, that the prisoner was guilty of the high treason charged upon him in the indictment. For here was a rising with an avowed intention to demolish all meeting-houses in general; and this intent they carried into execution as far as they were able. If the meeting-houses of the Protestant dissenters had been erected and supported in defiance of all law, a rising to destroy such houses in general, would have fallen under the rules laid down in Keiling, with regard to the demolishing all bawdy-houses. But, since the meeting-houses of Protestant dissenters are, by the Toleration act, taken under the protection of the law, the insurrection, in the present case, was to be considered as a public declaration by the rabble against that act, and an attempt to render it ineffectual by numbers and open force.

"Accordingly Damaree was found guilty, and had judgment of death, as in cases of high treason."

In the same case of lord George Gordon, lord Mansfield expresses himself thus, in addressing the jury. "There are two kinds of levying war, one against the person of the king, to imprison, to dethrone, or to kill him, or to make him change measures, or remove counsellors; the other, which is said to be levied against the majesty of the king, or, in other words, against him in his royal capacity, as when a multitude rise and assemble to attain by force and violence any object of a general

* Foster's Crown Law, p. 210.

* Foster's Crown Laws, p. 215.

public nature, that is, levying war against the majesty of the king; and most reasonably so held, because it tends to dissolve all the bonds of society to destroy property, and to overturn government, and by force of arms, to restrain the king from reigning according to law.

"Insurrections, by force and violence, to raise the price of wages; to open all prisons; to destroy meeting-houses; nay, to destroy all brothels; to resist the execution of militia laws; to throw down all enclosures; to alter the established law; to change religion; to redress grievances real or pretended; have all been held levying war. Many other instances might be put. Lord Chief Justice Holt, in Sir John Friend's case, says,— 'If persons do assemble themselves, and act with force, in opposition to some law which they think inconvenient, and hope thereby to get it repealed, this is levying war and treason.' In the present case, it don't rest upon an implication, that they hoped by opposition to a law to get it repealed; but the prosecution proceeds upon the direct ground, that the object was by force and violence to compel the legislature to repeal a law; and, therefore, without any doubt, I tell you the joint opinion of us all, that if this multitude assembled with intent, by acts of force and violence, to compel the legislature to repeal a law, it is high treason.

Though the form of an indictment for this species of treason mentions drums, trumpets, arms, swords, fifes, and guns, yet none of these circumstances are essential. The question always is, whether the intent is, by force and violence, to attain an object of a general and public nature by any instruments, or by dint of their numbers." *

In like manner, Serjeant Hawkins † thus expresses himself: "Those also who make an insurrection, in order to redress a public grievance, whether it be a real or pretended one, and of their own authority attempt with force to redress it, are said to levy war against the king, although they have no direct design against his person, inasmuch as they insolently invade his prerogative, by attempting to do that by private authority, which he by public justice ought to do, which manifestly tends to a downright rebellion; as where great numbers by force attempt to remove certain persons from the king; or to lay violent hands on a privy councillor; or to revenge themselves against a magistrate for executing his office; or to bring down the price of victuals; or to reform the law or religion; or to pull down all bawdy-houses, or to remove all

inclosures in general, &c. But where a number of men rise to remove a grievance to their private interest, as to pull down a particular enclosure, intrenching upon their common, &c. they are only rioters."

Mr. Hume* most ably and accurately sums up the doctrine of all the great authorities in the following terms:—"In the construction of law, the levying of war against the king is not understood in those insurrections only which have immediate relation to the person of his majesty, as if the object be to dethrone or imprison him, or to drive him out of the realm, or to cause him alter his measures or to remove evil counsellors from his presence. It equally embraces all those risings, which, though not aimed directly at the person of the king, are however against his royal majesty, that is, against his crown or royal dignity, against his prerogative, authority, or office. Under this description, according to all authorities, falls an insurrection for any of these objects—to reform the established law, religion, or political constitution of the land; or to obtain redress for national grievances, whether real or imaginary. For though they be real, the law and government of the realm, as long as they subsist, cannot know any thing of this course of correcting them, nor make account of it as any other than rebellion against the king, who, as the head of the state, is bound to prevent all such forcible interference of private persons with his own functions, or those of the legislative power."

It is impossible to add any thing to these authorities, which combine the names of some of the greatest men that ever adorned the English bench, speaking on cases actually before them, with those of the best commentators on the law, who were more deliberately composing for posterity. The application of these authorities to the present case is obvious; and there can be no doubt that if the public purpose in view had been carried into effect, or attempted to be carried into effect, by force, it would have been high treason.

[*Objection to want of description of treason.*]—The next objection that was stated was, that the prosecutor has not specified the manner in which the treason was to have been committed, which it is libelled that the panel administered an oath, purporting or intending to bind the persons taking the same to commit. Upon this, and indeed other parts of the case, wherever it suited the argument, it was broadly assumed, on the other side of the bar, that this is a charge of treason. Now, the exposure of this obvious fallacy is the

* 21 How. St. Tr. 644.

† Hawkins's Pleas of the Crown, p. 37.

* Hume, vol. ii. p. 427.

plain answer to this objection. It is a known rule of law, "that such an account of a criminal deed must be given, as may distinguish the particular charge from all other instances of the same sort of crime;"* and if this had been a charge of treason, unquestionably the prosecutor would have been bound to give the specification called for by the panel. But the fact is, that there is no treason charged, nor any other crime libelled, in the major proposition, except that whereof the whole facts are detailed in the subsumption. The crime is, the administering an oath, purporting to bind the person taking the same in a particular manner; and it is believed the administering of this oath is sufficiently distinguished from the administering of every other oath, and from every other act of administering the same oath. The object which that oath contained, or was intended to contain, an obligation to accomplish, was never carried into effect; and if it had, it would have been a crime of a different description. Now, what can the prosecutor set forth of the purport or the intendment, which is the essence of the crime, except the terms of the oath itself, and such other circumstances as accompanied the administration of it, as may throw light upon the meaning of the administrators and takers? All this he has done, and more he cannot do. He cannot state more of the facts than he knows; nor can he state more than was actually perpetrated; and the oath is the whole fact, and only source of information. Still less can he be called upon to draw an inference in law from facts that have never existed. The minor proposition is a detail of facts, and has nothing to do with law; and if he had drawn the inference required by the panel, he would not have added one iota to the relevancy. He has told your lordships all that was done; the whole facts of the case; and it is the principal part of those facts, that there was an obligation to commit a crime. That this crime, if committed, would have been of a particular description, and effected in a particular way, is nothing to the purpose, as it is not the *intended crime*, but the obligation to commit it; that is the point of ditty.

The prosecutor has in fact done much more than he is bound to do in this respect; for he has specified the precise objects and acts intended to be done, which in many cases may not be within his power. Suppose the parties administer and take an obligation, binding to commit treason generally, or, in the words of the act itself, "any treason," or all the ten treasons enumerated at the debate, or such treason as may be necessary for the

accomplishment of a particular end, or which they may be called upon to commit, by any individual or number of individuals, whose authority they bind themselves to obey; is it to be said that there is no relevancy, because the prosecutor cannot specify the particular description of the treason which it is intended to commit? Or, suppose an obligation to murder all those who stand in the way of some particular end: the individuals who may stand in the way, and the manner of their death, may be unknown both to the prosecutor and the conspirators; is it to be said that the statute libelled no operation in such a case?

The prosecutor points out what was actually done, and founds upon the law by which it is punishable; and here he apprehends his duty is discharged. He has nothing to do with the manner of an intended act, and far less with an inference in law from a fact that never had existence. He is bound to tell the panel the facts he intends to prove against him, and the law by which they are punishable, in order that he may be prepared for his defence; but he does not know how it can help the panel to shape his defence, to tell him what would have been the legal consequence of an act of which he is not accused, and which he only intended to commit. He might as well be required, in a case of an indictment for an attempt to poison, to specify the mode of death, and the legal consequences of murder. It is maintained, that this indictment would have been perfectly relevant, if it had merely libelled the wicked and malicious administration of the oath charged, without a syllable as to what its purport or intendment is; for, if the oath means what the prosecutor alleges, the prosecutor's gloss upon it is mere surplusage. If it did not mean any thing that comes under the act, then to be sure it would be necessary to libel the hidden meaning and purpose with which it is administered and taken, otherwise there would be no relevancy in the charge. But, if it openly express the unlawful meaning, as in the present case, it is itself the minor proposition, the connecting link between the major proposition and the conclusion; and the prosecutor knows no addition that can make the syllogism more perfect. *Major.* The administering an oath of a particular description is a crime. *Minor.* You did administer the following oath: *Ergo,* You ought to be punished.

If the libel rests upon the meaning of the oath itself, it is plain that the only question here is, whether the oath libelled falls under the particular description mentioned in the major proposition; and, so far as the case turns upon the meaning of the words of the oath, the Court will cer-

* *Hume*, vol. 2, p. 310.

tainly judge for themselves, without the least regard to any argument or inference of the prosecutor. In so far as the case turns upon a meaning not expressly conveyed by the words, the allegations of the prosecutor, as to the intendment, must enter into the relevancy. But here he maintains his charge upon the meaning of the words themselves; and, setting aside all the rest of the qualities affirmed of the oath as superfluous, he calls upon your lordships to say whether it falls under the statute or not; and denies that he is bound to set forth in the minor proposition any thing but what was actually done, and the time, place, and manner of the deed. He has accordingly described the time, and place, and a number of the circumstances under which the oath was administered; and, above all, he has stated the names of the individuals to whom it was administered, perhaps the most useful circumstance of the whole, in order to prepare the panel for his defence. But, as to detailing the time, place, and circumstances, of what existed in intention, it is obvious that such a specification is beyond his power. The oath may be administered before any part of the detail of the execution of the treason is arranged,—before any understanding among the conspirators as to their particular plan of operations—and, by its nature, the oath is likely, in general, to be the preliminary to every thing else. Yet here he is asked, not only to detail facts that have not happened, but to draw from them an inference in law. Now, he must say, that he cannot conceive any thing more foreign from the nature of a minor proposition, than the detail of a deed in contemplation, unless perhaps it be an inference in law from a crime which never had an existence. In short, he has set forth the administering an oath, purporting to bind, as forbidden by the statute; and he submits, that it is travelling out of the case altogether, to ask any thing of him beyond the oath itself, and the time, place, and circumstances of the administration. He can know nothing of the guilty purpose more than the parties told him in the oath.

The prosecutor has attentively reconsidered this part of the argument for the panel; and, from the beginning to the end of it, he has not been able to discover a single piece of reasoning that directly meets the point. The whole of it, without exception, proceeds upon the erroneous assumption, that it is a charge of treason of which your lordships are now called upon to judge; and if this plain distinction is kept in view, he will venture to say, that the argument has not even the vestige of plausibility.

[Whether an offence against this act can

be tried, being treason.] Another objection to the relevancy of this indictment was derived from a principle of the English law, which it was attempted to apply to this case, that all felony merges in treason; from which it was said to follow, that if the facts set forth in the indictment amount to treason, they cannot be tried as an offence against the act libelled on. The learned gentleman who maintained that plea, was obliged to assume the fallacy of all the ingenious arguments that had gone before, to show that there is no treason in the case, and to abandon the whole of those rules of construction of the oath and the indictment, for which so great a struggle was made by the other counsel for the panel. He assumed, that treason was not only in the view of the parties, and intended to be committed, but that, by taking and administering the oath, they were guilty of treason by the act of the 36th of the king. It is necessary, therefore, before you can pay any attention to this alternative plea, that your lordships should come to be of the prosecutor's opinion as to the relevancy of the indictment on the meaning of the oath; for this part of the argument for the panel is totally inconsistent with, and destructive of the other.

One or two remarks were made, with much diffidence, at the time, on the long and learned argument by which this view of the subject was supported; but the prosecutor has since had the satisfaction to find, from a consideration of the English writers, and from the best authorities to which it was in his power to apply for information, that those remarks were perfectly well founded. Indeed, he is now totally at a loss to account for the respect with which he listened to this argument at the time when it was first delivered, upon any other ground than the impression on his mind, that what was prepared with so much labour, and maintained with so much confidence and parade of learning, must have had something to recommend it, which he was not able to discover. He has now, however, ascertained, that there was no discovery to make; and has accordingly again to state to your lordships, that the principle of the common law of England founded on, has no application to any trial in this Court according to the law of Scotland; and that, even in England, it has no application to a trial for an offence against the act of the 52nd of the king.

1st, It is understood to be a principle in English law, that if a man be tried for an offence as a felony, which in fact amounts to treason, he must be acquitted, and he may be tried over again for treason. But there is no authority for saying that a man cannot be tried for felony when

his offence amounts to treason; and it is obvious that this could never be law, because the jury alone can judge whether he has committed treason or not; and unless they are satisfied, upon the evidence, that he has committed treason, he cannot be acquitted, on this ground, of the felony. It is the law of England, that a man acquitted on such grounds may be tried again for the same fact under another denomination of crime; and the legislature, in favour of offenders, have thought fit to make a trial under this act, an exception from the general rule; and have declared,* "That any person who shall be tried, and acquitted or convicted of any offence against this act, shall not be liable to be indicted, prosecuted, or tried again, for the same offence or fact, as high treason, or misprision of high treason." It is therefore submitted, that this objection, derived from the law of England, is one that can only be judged of by the jury, as the Court cannot try the fact, and is an objection to a conviction, and not to a trial, as the terms of the act show—which take for granted the possibility of a trial for an offence under the act, which offence may turn out to be treason. If no person can be tried for an offence against the act, which offence may at the same time be treason, this clause implies an absurdity.

2^{dly}, But the meaning of the legislature does not rest upon these words alone. For, considering that the offences against this act might often amount to treason, it occurred that it might be argued that this act, being the last declaration of the will of the legislature as to such offences, did, by appointing this mode of prosecution, abrogate all former laws against them; and it was further enacted,† "That nothing in this act contained shall be construed to extend to prohibit any person guilty of any offence against this act, and who shall not be tried for the same as an offence against this act, from being tried for the same as high treason, or misprision of high treason, in the same way as if this act had not been made." Thus plainly showing that it was fully under the view of those who passed this law, to make it occasionally applicable to cases of treason which it should not be thought expedient to punish as such.

3^{dly}, The act itself not only makes express provision for the trial of "any offence committed against this act," which of course includes cases that may amount to treason, before this Court, but the clause is expressed in such a manner, as to demonstrate that the offences are to be tried in the ordinary way. "‡ Provided also, and be it further enacted, That any

offence committed against this act on the high seas, or out of this realm, or within that part of Great Britain called England, shall and may be prosecuted, tried, and determined, before any court of Oyer and Terminer, or gaol delivery, for any county in that part of Great Britain called England, in such manner and form as if such offence had been therein committed; and, if committed in that part of Great Britain called Scotland, shall and may be prosecuted, tried, and determined, either before the Justiciary court at Edinburgh, or in any of the circuit courts in that part of the united kingdom."

4^{thly}, The whole enactment would be nugatory, as far as the binding to commit treason goes, if this argument be well founded; for every oath binding to commit treason may be maintained to be treason as well as the present. It may be said, that no oath can be administered to kill or to depose the king, or to overturn the government, that would not be an overt act of treason, in compassing or imagining the king's death. The treason would be the imagination or intention, and the oath the overt-act manifesting it. So, the administering an oath to levy war for a public purpose, might be said to be a conspiracy between the persons administering and taking the same to levy war, (though not treason as levying war); and the oath or conspiracy might be said to be an overt act of compassing the king's death, or to be treason under the 36th of the king. In England, the oath of one witness is sufficient proof of the statutory offence, but two witnesses are necessary for proof of treason; and suppose the evidence of only one witness to be had, if the offender could not be convicted of the statutory offence, he could not be convicted at all. Upon the statute, therefore, it is submitted to be quite clearly the meaning of this law, to make the administering or taking an oath, purporting to bind to commit treason, triable according to the ordinary course of justice, whether it be treason or not.

What has been already said, is such an answer as might be made in an English court to this objection; but though the preceding view of the subject be of itself quite conclusive and satisfactory, the prosecutor can by no means admit that it is necessary to have recourse to any part of it in the present case. For he maintains, that the statement formerly made is perfectly correct; that the principle of the law of England, as to the merging of felony in treason, has no application whatever to trials before the criminal courts of Scotland. It will not do to say generally, that the whole doctrines of the English law, as to treason, have been introduced into Scotland. Let us attend for a mo-

* Sect. 8. † Sect. 8. ‡ Sect. 7.

ment to the expressions of the act of queen Anne, and we shall distinctly see what the legislature did. In the first place, they enact,* that all crimes and offences which are treason in England, shall be treason in Scotland; and that no other crimes or offences shall be treason in Scotland. Does this compel the prosecution of any crime as treason, which may be tried under another and lower denomination? Certainly not. It is an established maxim of our criminal law, that a man may be tried for a crime under any denomination of which it is susceptible; and, particularly, that a prosecutor cannot be compelled to charge it by its highest denomination.† If an act be passed, declaring a particular offence to be henceforth one of a higher description than it has formerly been, the prosecutor is only empowered, not compelled, to try it under its newly acquired character. Examples of this doctrine need not be given; they occur in daily practice. If, instead of declaring their meaning expressly, the legislature make reference to any particular law of England, or of any foreign country, which is quite the same thing, and declare, that what is a crime by that foreign law, in that foreign country, shall henceforth be a crime here, and punishable in the same way, this will not abrogate the previously existing common law of the land, by which the same offence is punishable as a lower or different description of crime. The great principles of our common law, sanctioned by the experience of ages, and founded on the immutable basis of reason and truth, are not to be taken away by implication. Your lordships have acknowledged this doctrine in a hundred instances, to which it is needless to refer; as, for example, in the remedy of suspension, which has been most properly held not to be taken away, even by a clause declaring the judgment of an inferior court final to all intents and purposes. But here there is no such implication of any interference with the rules of our common law. It is said, that such and such offences shall be treason; but it is neither said nor implied that they shall always be tried as such whenever they occur, notwithstanding any rule of law to the contrary. The law of treason, introduced by the act of queen Anne, is entirely statutory, and has nothing to do with the common law of England, of which every subject, and every lawyer, in this part of the kingdom, is presumed and entitled to be in total ignorance.

In the next place, the act of queen Anne appoints ‡ trials for high treason in

Scotland to be conducted "in the same manner" as in England. And certainly it can as little be maintained to be a consequence of this part of the statute as of the other, that the general principle of the common law of Scotland, shall be abolished, by which a man may be competently tried for an offence by a lower than the highest denomination of which it is susceptible and that a general principle of the common law of England, not peculiar to the law of treason, shall be substituted in its room. And who does not see that in this, as in other instances, our practice is the most favourable to the accused, as our law fixes only a *maximum* in the scale of legal responsibility, and leaves the rest to the prosecutor? Declaring, however, that of whatever form of charge he shall make his choice, the offence or fact which shall once have been submitted to the investigation of a jury, can never again, in any shape, or under any description, be made the subject of trial, whatever may be the result. Now, this circumstance at once explains the origin of the maxim of English law above-mentioned, and its total inapplicability to our criminal code, that whereas, in the English practice, a man may be tried over again for the same fact, under a different description of the crime, it therefore becomes essential to the ends of justice that he should be acquitted of the first charge, that he may not be twice convicted and twice punished for the same offence. In our practice, on the other hand, if the accused shall have once tholed an assize for a criminal deed, by whatever *nomen juris* it may be defined in his indictment, whether acquitted or convicted, he has made his atonement to the law, and is for ever free from all criminal prosecution on that account. The plain meaning of the act of queen Anne is, to make the same criminal deeds treason in both parts of the united kingdom, and to have them tried in the same manner; and it would have been going much further to have altered the law of Scotland, so as to make it imperative to try for treason, what, by a general principle of that law, might be less severely punished, and to prevent the trial of a man for a less offence, whose acts might amount to a greater.

In the present case, too, it will always be kept in remembrance, that the argument is not merely that the act of queen Anne has abolished a general principle of our common law, and introduced a general principle of the English common law, but that it has such force and validity as to destroy the express words of the subsequently declared will of the legislature in the 52nd of the king.

It is impossible to dispute that, in the legal definition of the crime of treason—

* 7 Anne, c. 21, sect. 1.

† Hume, vol. iii. p. 376.

‡ Sect 9.

is the mode and form of process by which it is to be tried—in the rules of evidence by which it is to be established—in the mode and effect of conviction and punishment—in short, in the whole process, from the commencement to the termination, the law of England is transferred to Scotland. But, at this point, the transference of the English law, and the innovation upon the Scotch law, stopt short. If this, therefore, had been a prosecution for the crime of treason, your lordships must have looked to the rules of the law of England.

But, as has been already observed, the proposition upon which the counsel of the panel rest, is of a totally different description. This is the first occasion, it is believed, on which it has ever been hinted at or maintained by any lawyer in either kingdom; and it is impossible to contemplate the effects of it without the deepest alarm. The proposition is, that, by the articles of Union, a general principle of the English criminal law has been introduced into Scotland. It is a quality in the definition of felony—it is a defence against a charge of felony, that the facts from which it is inferred constitute the higher crime of treason. Nay, more, it is likewise a quality in the definition of every inferior crime, and is not pretended to be peculiar to felony. It must be admitted to be a principle inherent in, and diffused over, the whole common law of England relating to crimes. If the principle maintained by the counsel for the panel be correct, then murder, robbery, theft, assault, mobbing, or sedition, cannot be tried, if the facts from which these crimes are deduced can, by any construction, however forced, be proved to infer the crime of treason. The privilege of the public prosecutor in Scotland, by which he is entitled to prosecute for the lowest denomination of crime which the criminal act infers, would be destroyed by the introduction of this strange principle, and without any conceivable advantage. For, in England, private individuals being the prosecutors, they might occasionally be induced to favour the party, accused, by trying them upon a charge inferring too low a punishment; but here the invaluable institution of a public prosecutor prevents such a risk.

On the whole, the answer to this plea is clear and irresistible; namely, that although the law of treason, as that crime is prosecuted, defined, and proved in England, was by the articles of the national union, transferred to Scotland; yet every other part of our criminal code was, in all the purity and simplicity of its systematic principles, secured inviolate.

It would be an easy task to point out both objections to this part of the argu-

ment, and to expose various errors, both in the law and general reasoning by which it was supported; but enough has been said already to satisfy your lordships, that of all the reasonings which the consultations of the eight learned gentlemen of counsel for the panel have produced, this is that which is least deserving of your serious attention.

It shall only be observed further, before quitting this subject, that, in several of the cases of sedition which occurred some years ago, it was expressly stated, both at the bar and on the bench, that certain acts charged amounted to treason, and might have been so libelled;* and yet no objection occurred on that ground to their relevancy.

The prosecutor trusts that he has now sufficiently answered all the objections to the relevancy of the indictment that are likely to appear deserving of any attention. At the same time as this indictment differs in some verbal alterations from the last, it is more than probable that it may suggest to the ingenuity of his learned friends some verbal criticisms, of which he is not aware. Of such he shall only say in general, that it is not for the purpose of affording an opportunity of discovering objections of this description that panels are served with copies of their indictments fifteen days before their trial, but in order to make them acquainted with the nature of the facts to be proved against them, that they may be adequately prepared for their defence. If a fair and candid statement has been given to the panel of the crime with which he is charged, so as he may know it from all other instances “of the same sort of crime,” this is the essence of the relevancy; and the humane indulgence, in the previous service of the indictment, in which our practice differs from that of England, renders that critical and punctilious accuracy quite unnecessary here, which it is the genius of the English practice to observe, in slight and immaterial modifications of names and expressions. “I cannot find,” says Mr. Hume, speaking of this peculiarity of the English practice, “that in this respect we have ever been disposed to follow their example, but rather, and I think with as sound a judgment, to disregard such criticisms as unseemly niceties, which serve only to disappoint the course of justice, and bring the law itself into contempt.” It cannot, however, be denied, that attempts have of late been made to encroach upon the general principles of sound reason, by which our criminal law in such matters has been in time past administered, and to substitute in their room a minute criticism, and technical construction of certain words

* See the cases cited in the note, p 242. and 2.

and phrases, totally useless in our courts for the protection of innocence, but certainly tending to facilitate the occasional escape of the guilty. Our best and ablest commentator has shown much anxiety to guard against this evil in many passages of his valuable work,* and, unquestionably, unless the law is protected from its growth by the wisdom of the Court, it will tend to degrade a liberal science to a mechanical art; and, in time, to produce effects upon our criminal code, not very dissimilar to what would follow from such a retrograde movement in philosophy, as would restore to its empire the logic of the schools.

Mr. Hume, in the passage above quoted, probably had in view the beautiful and impressive language of lord Hale† on this subject;—an authority which cannot fail to meet with respect on the other side of the bar. “In favour of life great strictness has been, in all times, required in points of indictments; and the truth is, that it is grown to be a blemish and inconveniency in the law and the administration thereof. More offenders escape by the over easy ear given to exceptions in indictments, than by their own innocence; and many times gross murders, burglaries, robberies, and other heinous and crying offences, escape by these unseemly niceties, to the reproach of the law, to the shame of the government, and to the encouragement of villany, and to the dishonour of God; and it were very fit, that by some law, this overgrown curiosity and nicety were reformed, which is now become the disease of the law; and will, I fear, in time grow mortal, without some timely remedy.” The editor adds, in a note: “This advice of our author would, if complied with, be of excellent use; for it would not only prevent the guilty from escaping, but would likewise be a guard to innocence; for thereby would be removed the only pretence upon which counsel is denied the prisoner in cases of felony; for if no exceptions were to be allowed but what went to the merits, there would then be no reason to deny that assistance, in cases where life is concerned, which yet is allowed in every petit trespass.” In Scotland, where criminals have, in every stage of the process, the assistance of counsel, and the advantages of being served with copies of their indictments fifteen days before trial, and of having every point of law discussed before they are sent to a jury, justice requires no favour to objections that do not enter into the merits of the case.

According to the prosecutor's notion of

his public duty, it would be impossible for him to do any thing more inconsistent with it, than to admit that, in this or any other case, any technical words or phrases are essential to the relevancy of the minor proposition of an indictment. It is established law, that, “although the subsumption must be suitable in substance to the outset of the libel, it is not necessary in our practice, to employ and repeat the precise same technical terms in the one as in the other member of the charge. It is sufficient that facts are related in the subsumption, which amount to the crime whereof, in the outset, the libel professes to accuse.”* He has no desire, however, to shelter himself under this rule from any but frivolous and captious objections. He has endeavoured to express himself in as precise terms as possible; and he is confident he has expressed himself with more precision and accuracy than the received practice of the law requires. He has even yielded to the clamour from the other side of the bar for the insertion of the word *feloniously*, because it appeared to him at least a harmless, and certainly not an inappropriate expression, in libelling upon a British statute, where the offence, or crime is designated by the term “felony,” though felony has no technical meaning in the law of Scotland; and it has been repeatedly decided, on the soundest principles, that the want of this epithet is no objection whatever to the relevancy of any charge†.

At all events, whatever special objections may be taken to any expressions in the subsumption, your lordships will always remember, that if the charge of art and part be correctly stated in terms of the act of parliament, it is impossible that any “exception or objection take awaie that part of the libel.” 1592, cap. 153.

On these grounds, the prosecutor submits, the indictment ought to be found relevant to infer the pains of law.

In respect whereof, &c.

H. HOME DRUMMOND.

July 10, 1817.

INFORMATION

FOR

ANDREW M'KINLEY, present Prisoner
in the Castle of Edinburgh,

AGAINST

ALEXANDER MACONOCHE, Esq. of
Meadowbank, his Majesty's Advocate,
for his Majesty's interest.

On the 22nd day of February last, the

* Hume, vol. Introduction, p. 44; vol. 3, p. 316; Sup. p. 269; *et alibi passim*.

† Hale's H. P. C. vol. 2, p. 193.

* Hume, vol. 3, p. 304.

† Hume, vol. 3, p. 423. and Sup; p. 227.

informant, Andrew M'Kinley, was apprehended on a warrant by the sheriff of Lanarkshire, on a charge of being engaged in a "treasonable plot or conspiracy," intended to "accomplish the subversion and overturn of the present constitution and government of this kingdom," &c.; and also of having taken and administered oaths, contrary to the statute of the 52nd Geo. 3, c. 104. The application also stated, "That treasonable correspondence, by letter and otherwise, had been held with other districts of this country, and of England; and that *arms, ammunition, and offensive weapons, have been prepared and collected*, or are ordered, and in process of being made, prepared, and collected." On that warrant he was brought before the sheriff for examination; and thereafter he was committed to the gaol of Glasgow, till liberated in due course of law, by a warrant of the sheriff, on charges of a similar import.

Of this date,* a petition was presented to your lordships, in the name of his majesty's advocate, which set forth, "That your petitioner charges Andrew M'Kinley and William Edgar, present prisoners in the tolbooth of Glasgow, with *high treason*, and with a *treasonable conspiracy* to obtain annual parliaments, and universal suffrage, by physical force, and particularly with *taking and administering oaths*, binding themselves, under pain of death, to the accomplishment of those purposes; the administering of which oaths is a capital felony, by the statute of the 52nd of the king, in that case made and provided, c. 204.; which crimes the said persons are charged with having committed," &c. It prayed your lordships "to grant warrant to any of the macers of Court to transmit the said Andrew M'Kinley and William Edgar, under a sure guard, till they are brought to, and incarcerate for the said offences in the Castle of Edinburgh, till liberate therefrom in due course of law." On this application, your lordships granted warrant accordingly,† for delivering, receiving, and transmitting the informant and William Edgar, "till they are brought to, and incarcerate within, the Castle of Edinburgh, therein to be detained, till thence liberated in due course of law," &c.

As the informant thus stood committed expressly for the crime of high treason, as well as for another offence of an inferior denomination, he was advised that it would be in vain for him to apply for letters of intimation, under the statute 1701, c. 6, in order to limit the possible duration of his confinement; because the statute of the 7th Anne, c. 21, having introduced the whole law of England in

regard to the trial of the crime of treason, no intimation to his majesty's advocate could in that case be competent to compel either the commencement or the conclusion of the trial.

But, soon after the informant had been thus imprisoned, he was served with an indictment, charging him, not with the crime of treason, but with the crime of felony, under the statute of the 52nd Geo. 3rd, which provides, that any person who shall "administer, or cause to be administered, or be aiding or assisting at the administering of any oath or engagement, purporting, or engaging to bind the person taking the same to commit any treason or murder, or any felony punishable by law with death, shall, on conviction thereof, be adjudged guilty of felony," &c. And, at the same time that this indictment was served on the informant, a similar indictment was executed against William Edgar.

The informant was advised by his counsel that this indictment was in many respects irrelevant, both in its form and in its substance. In the minor proposition it stated, That the informant was guilty of the said crimes, in so far as he, having "*wickedly, maliciously, and traitorously conspired and agreed, with other evil disposed persons, to break and disturb the public peace, to change, subvert, and overthrow the government, and to excite, move, and raise, insurrection and rebellion*; and especially to hold and attend secret meetings, for the purpose of obtaining annual parliaments, and universal suffrage, by unlawful and violent means, did then and there, wickedly, maliciously, and traitorously administer, or cause to be administered, or did aid or assist in the administering, to a great number of persons, an oath or engagement, or an obligation in the nature of an oath, in the following terms, or to the following purport." It then set forth an oath in certain specified terms, bearing in the body of it these particular words, "and that I will support the same to the utmost of my power, either by moral or physical strength, as the case may require." And it subsumed, which oath or obligation did thus purport, or intend, to bind the persons taking the same to commit treason, *by effecting, by physical force, the subversion of the established government, laws, and constitution of this kingdom.*

William Edgar was first brought up for trial on the 9th April, 1817. On that occasion, his counsel stated various objections to the relevancy of the indictment. 1st, That the facts averred in the minor proposition, taking them as they were stated, did not amount to the crime charged in the major; and in particular, that the oath set forth did not purport or intend to bind the parties taking the same

* March 17, 1817.

† March 17, 1817.

to commit any treason. 2ndly, That the charge in the minor proposition was not sufficiently specific; and, in particular, that it did not state the particular treason, to the commission of which the oath was alleged to purport or intend to bind the parties taking the same. 3rdly, That, in so far as there was any attempt at specification, the libel was irrelevant, in so far as it avowed that to be a treason, which is not a treason of any known denomination. 4thly, That the statement in the beginning of the minor proposition, which charged directly a treasonable conspiracy, was not competent or admissible, being in fact an attempt to prove the crime of treason against the panel, under an indictment which did not charge treason in the major proposition, and in a form of trial not competent in that case. Objections, having these general characters, were argued at considerable length; and it was particularly observed, that the prosecutor, after quoting the oath, in which the words, "either by moral or physical strength" were used, had, in his own commentary, found it necessary to change the term, and to state that the oath bound the parties to commit "treason, by effecting by physical force the subversion," &c.

When that debate was concluded, your lordships delivered your opinions, and very grave and serious doubts were expressed concerning the relevancy of the libel. Considering the case to be of great importance, your lordships ordered the parties to lodge informations on the points which had been argued. On the same day, the diet against the informant, M'Kinley, had been adjourned to the 10th of April; but the diet against Edgar was adjourned till the 19th May.

Soon after this adjournment, his majesty's advocate, feeling undoubtedly the weight of the objections which had been urged against the libel as it stood, determined to abandon these indictments, both against Edgar, and against the informant. And accordingly, of this date,* new indictments were served.

On the 19th of May, Edgar was put to the bar, and was required to plead to the new indictment. But as the diet had not been deserted on the former indictment by any interlocutor of your lordships, an objection on this ground was stated; and your lordships deeming it necessary to appoint a search for precedents in the records of the Court, the diet was adjourned till the 26th May. On that day, your lordships determined, that the new indictment was well served, but that the panel was not bound to plead to it; until an interlocutor deserting the diet on the former indictment should be pronounced by

your lordships. Such an interlocutor having been accordingly pronounced, Edgar pleaded not guilty to the second indictment, and your lordships continued all the diets of Court till the 2nd of June.

On the 2nd of June, the informant, Andrew M'Kinley, was brought up for trial on the second indictment. After a similar interlocutor as in the case of Edgar, deserting the diet on the first indictment, had been pronounced, the informant pleaded not guilty, and his counsel then stated various objections to the relevancy of this second indictment. It was stated, that it was still liable substantially to all the same objections which had been urged against the former indictment. The prosecutor had indeed thrown out the direct allegation of a traitorous conspiracy; but he had still libelled, that the panel did "wickedly, maliciously, and traitorously administer, or cause to be administered," &c. whereby there was still a direct attempt to prove treason under this indictment for a felony only. The oath was recited in the precise same terms as in the former indictment; and then the libel proceeded, "which oath, or engagement, or obligation, to the foregoing purport, did bind, or did purport or intend to bind, the persons taking the same to commit treason, by effecting, by physical force, the subversion of the established government, laws, and constitution of this kingdom, and especially by obtaining annual parliaments and universal suffrage by unlawful and violent means."

The argument on the general relevancy was resumed at great length, and new considerations were suggested, shewing that this indictment was, if possible, more irrelevant than the former. Your lordships at the same time called the attention of the counsel to a particular objection to the form of the minor proposition, in stating the particular occasions on which the alleged oath or obligation had been administered; where it was described as an oath not purporting or intending to bind, &c. but "binding the persons taking the same to commit treason, as said is." Your lordships wished to receive informations on the whole general points which had been argued. But you expressed decided opinions, that the indictment was bad in the point last mentioned, and also bad in the use of the word: *traitorously* instead of *feloniously*.

In consequence of the opinions thus intimated, his majesty's advocate moved your lordships to desert the diet on this second indictment *pro loco et tempore*, reserving to him to raise a new indictment for the same offence. Your lordships accordingly pronounced such an interlocutor.

Thereafter, in the same day, a petition was presented by the lord advocate, which stated, "That your lordships have this day been pleased to desert the diet against *Andrew M'Kinley*, present prisoner in the Castle of Edinburgh, accused as in the indictment, the diet whereof has this day been deserted, and *who* stood committed as *guilty* of the crimes of high treason, and with a treasonable conspiracy to obtain annual parliaments and universal suffrage by physical force, and administering unlawful oaths, binding himself, under pain of death, to the accomplishment of these purposes, the administering of which oaths is a capital felony by the statute of the 52nd of the King, c. 104., which crimes the said person is charged with having committed at Glasgow, and in the vicinity thereof, in the months of November and December, 1816, and January and February, 1817, which therefore makes this application necessary for a new warrant," &c. And it prayed your lordships "to grant warrant to commit the said Andrew M'Kinley to the Castle of Edinburgh accordingly." Your lordships did then grant warrant to apprehend the informant, "and to commit him prisoner to the Castle of Edinburgh, therein to be detained till thence liberated in due course of law." The informant does not at present stop to take notice of the extraordinary terms of this last application. It is quoted, only that your lordships may be aware, that the informant still stands committed for treason, and for a treasonable conspiracy, as well as for the crime of administering unlawful oaths under the statute.

Of this date*, a third indictment was executed against the informant; and, on the 23rd of June, he was brought to the bar, and pleaded not guilty. His counsel were prepared to argue the same general objections which had been stated to both the former indictments, and to maintain, that this last was, if possible, the worst of them all. But it being understood that your lordships were to order informations, it was thought unnecessary to occupy the time of the Court with any debate; and your lordships pronounced the following order: "Ordain parties procurators to give in informations upon the relevancy of the indictment, to the clerk of Court, in order to be recorded; the prosecutor to give in his informations on or before Thursday next, and the procurators for the panel to give in his information on or before the 9th day of July next: Continue the diet against the panel till Monday the 14th day of the said month of July, and ordain all concerned then to

attend, each under the pains of law, and the panel in the mean time to be carried back to the Castle of Edinburgh." The prosecutor's information was accordingly lodged on the 26th June; and the informant is now to enter into the consideration of the relevancy of this third indictment.

The prosecutor states, that he has no hope of suggesting any new views of the case, and that he will not think himself justified, by the inducement of novelty, in abandoning those grounds on which he has always been of opinion that the indictment ought to pass to the knowledge of an assize. It must be admitted, that the learned prosecutor has been sufficiently steady in adhering to most of his own ideas on this matter, and that he has not furnished your lordships with many new lights on the most important questions which arise. Yet neither his indictment, nor his information, is altogether destitute of novelty. There are propositions maintained so very new and remarkable, that, though they were indeed suggested in a *via voce* pleading, the informant scarcely expected that they would have been deliberately put on the record of the Court; and after having twice indicted the informant, founding on an oath of the terms or purport specially set forth, he has found out, that one objection to the relevancy of those indictments is at once removed by the simple expedient of *changing the fact*. "The argument is now in a great measure abolished by the introduction of both the words into the new indictment." In the middle of the oath alleged to have been administered, the words are changed, and instead of the terms, "either by moral or physical strength," your lordships have now these words, "either by moral or physical strength, (*or force!*)" What may be the effect of this addition, the informant may perhaps afterwards inquire. But the prosecutor has at least the merit of some novelty in this expedient for curing an objection of relevancy, by adapting the fact to his own argument, though he had not ventured so to state it in any of the former indictments.

But the informant is much more anxious to satisfy your lordships on the very important questions which occur in this case, than to analyse minutely the line of argument adopted by the prosecutor. He will have occasion to advert to some of the extraordinary positions maintained; and, with great submission, they appear to him in a great measure to reduce the plea which they are found necessary to support to an absurdity in law.

To your lordships, who are so well acquainted with the subject, it might

* June 7, 1817.

seem to be a very unnecessary subject of inquiry, to consider what is the real meaning of a question on the relevancy of an indictment. But the manner in which the case has been treated by the prosecutor renders this indispensable, as the basis of the whole discussion; for he appears to have entirely lost sight of the fundamental principles of a Scotch indictment, as well as of the powers and duties of your lordships in considering it.

The indictment is in the form of a syllogism. The *major* proposition lays down the general nature of the crime in the abstract, with its qualities and aggravations. The *minor* proposition defines the *particular species* of that crime with which the panel is charged, and details the *facts* from which his guilt is to be inferred. The *conclusion* is, that, the charge being proved, the punishment fixed by the law shall be inflicted.

Every indictment must shew on the *face of it* a plain relevancy, otherwise it cannot be sent to trial at all. Your Lordships must be enabled to judge, whether the specific charge, meant to be made against the panel, will amount to the crime charged in the major proposition; and you must be enabled to judge, whether the particular facts alleged are of such a nature as to amount to that specific charge. The panel has a right to be informed, in the minor proposition, of the precise accusation that is made against him, and also of the leading facts on which it is founded. But it is not merely for the panel's information that the specification in the minor proposition is required. It arises from the very principle of such an indictment, and the rules which govern the trial of crimes in this Court. The relevancy of the charge belongs to your lordships, and not to the jury; and the prosecutor has it not in his power to take the cognizance of this relevancy out of the hands of the Court.

There is, in this respect, a distinction between the practice of this Court, and the practice of the criminal courts in England, which it seems to be of some importance to remember. In England, the indictment is drawn comparatively in a very general form; and it is competent, even after the verdict of a jury finding the prisoner guilty to make a motion in arrest of judgment, on the ground of errors, or of general irrelevancy, in the indictment in point of law. This is the usual form of trying questions of relevancy; and, accordingly, with few exceptions, it is scarcely ever the practice to object to the indictment *in limine*.

Your lordships know that the practice is essentially different in this Court. The

interlocutor of relevancy pronounced by the Court determines the general law of it; and though the panel is generally permitted to use whatever arguments he thinks fit to induce the jury to acquit him, he can never afterwards plead to the Court any objections to the relevancy of the indictment. A verdict of *guilty* finishes the case for ever; and if the panel, so convicted, still thinks himself in any way aggrieved, he has no remedy but in the mercy of the sovereign.

This being undeniably the rule of the law of Scotland, it must be evident, that it creates an absolute necessity, not only for the utmost precision and accuracy in the statement of the charge in the indictment, but for the considerable minuteness of detail in setting forth the facts on which the charge is founded. It must be so stated, that not only the panel may be aware of the precise nature of the charge against which he has to defend himself, but the Court may be enabled to form a correct opinion on the relevancy of the whole accusation. It will not do to wait for the disclosure of the case in evidence. The Court must, in the first instance, see a *clear relevancy on the face of the indictment*, by a distinct exposition of the specific nature of the charge, and of the leading facts.

It is certainly of no importance, what opinion shall be formed on the respective merits of these two modes of procedure. Your lordships will probably be inclined to think that the advantages of your own rule are sanctioned by a long course of experience, and that the inhabitants of this country have every reason to be satisfied with a system, which so effectually secures them against being put in hazard by irrelevant accusations, or by charges, the precise nature of which they do not know.

But it is self-evident, that the whole principle of this course of trial absolutely requires a great degree of precision in the minor proposition of the indictment. And accordingly, no matter of law ever was more clearly laid down, or more rigidly adhered to, than the rule which imposes this necessity on all prosecutors has been in the laws of Scotland. Trite though the subject may be, the informant considers it to be indispensable to lay before your lordships some part of Mr. Hume's statement on this matter.

After explaining the introduction of the minor proposition, which simply asserts that the panel is "guilty actor, or art and part, of the foresaid crime," Mr. Hume goes on to observe,* "The second part of the charge, or subsumption, as it

* Hume, vol. 3, p. 301.

is called, is introduced with the words "In so far as;" and consists, to describe it generally, of a narrative of the alleged criminal act, with the due specification of the time, place, and manner of doing it, so as to justify the preceding affirmation of the panel's guilt, and distinguish likewise this particular charge from ALL OTHERS OF THE SAME SPECIES, and bring the panel to the bar, sufficiently informed of that whereof he is accused.

"I say, in the first place, that this part of the libel must give such a history of the deed that has been done, as shall warrant the preceding affirmation of the panel's guilt of the crime which is stated in the major, and is now referred to in the subsumption of the minor proposition." The author then goes on, at considerable length, to explain this point of law, that the fact must amount to the crime charged in the major proposition; and among other examples of the rule, he gives this: "On such a ground, among others, the Lords dismissed a libel for perjury, which set forth the several articles of the panel's deposition, and affirmed that they were contrary to the truth, but omitted to say, that the panel swore these things, 'knowing the same to be false.'" The informant shall presently take the liberty of quoting some other passages in a different part of Mr. Hume's work, on this very material case of trial for perjury.

But after explaining this branch of the rule, he goes on to the other: "I have said in the second place, that a libel is not good, 'unless it give such an account of the criminal deed as may DISTINGUISH THIS PARTICULAR CHARGE FROM ALL OTHER INSTANCES OF THE SAME SORT OF CRIME, and thus bring the panel to the bar, sufficiently informed of that whereof he is accused: Otherwise the purpose would not be fulfilled which the law entertains, in ordering the panel to be served with a copy of his libel, and allowing him so many days to make preparation for his defence.'" Afterwards he says, "And indeed, so undeniable is the equity of this maxim, that it seems to have been uniformly observed in the trial even of crimes against the state, and in the times the least remarkable for mild or impartial decisions in that class of cases." Then follows a detailed illustration of the point. The informant can only select a few passages: "It is matter of substantial justice, and has been uniformly observed in the practice of later times, that the prosecutor shall not be held sufficiently to have explained himself in charging the crime by its technical appellation, and affirming that he, the panel, did commit or was

guilty of that crime against such a person, at such a time, and place; He shall further be obliged to support and justify this affirmation, with an account of the particular fact; an account which takes notice of those leading and peculiar circumstances of the deed, which serve to distinguish it from other deeds of the same class, and of which any spectator would naturally make mention, in relating what he had seen. In a case of murder, for instance, the libel shall not be good thus: 'Yet true it is and of verity, that you, the said A. B. panel, are guilty actor, or art and part, of the said crime of murder, in so far as, upon the 10th day of April, 1797, you did kill and murder C. D. merchant in Edinburgh, within his own dwelling-house, situated in the High Street of the said city of Edinburgh;' and so conclude, without communicating either to the judge or the panel any further particulars of the story. The reason is obvious: A murder might be committed on the person of C. D. at the time and place libelled, in many various ways, as by shooting, stabbing, strangling, poisoning, and so forth; and, according as it is intended to prove one or another of these modes of slaughter, the panel may have to take a different course towards his defence and exculpation."

Afterwards, "I may add, that the prosecutor is obliged to enter into such a detail, for this further and equally substantial reason, that 'HE MUST OTHERWISE BE VESTED IN EFFECT WITH THE ENTIRE COGNIZANCE OF THE RELEVANCY OF HIS OWN LIBEL, a matter which belongeth not to him, nor even to the jury, BUT TO THE COURT ALONE: and that he might thus force on the trial of such a charge, which, to be dismissed as inept or irrelevant, needs only to be opened up and explained. For under these general terms of murder, rob, steal, and the like, the prosecutor may conceal some nice and disputable, or perhaps some fantastical and extravagant notions of his own, such as are unknown to the law and practice of the land, &c.'" Now, if the prosecutor be allowed thus to wrap up his case in mystery, and keep the fact to himself, which is the foundation of his charge, he, for certain, gains his object of having his libel remitted to an assize: with whom, if he can prevail to adopt his opinions on the subject, how false and erroneous soever they be, he may obtain a favourable verdict, and thus constrain the judge to pass sentence on the prisoner, contrary to the law and justice of the case.

"And if this be true of such crimes as theft and murder, much more does the same hold good of many other crimes, which are of a more complex or more subtle nature, and with respect to which, unless elucidated

* Hume, vol. 3, p. 302.

† Ibid. p. 310, 311. ‡ Ibid. p. 316, 317.

* Hume, vol. 3, p. 318.

with a full detail of the circumstances of the fact, no notion can well be formed whether the charge be pertinent or not. Take, for instance, the crime of *bribery*." Among other examples under this head, the author states the case of *perjury*. "The like discussion took place in the case of *Lawson of Westertown*,* on that article of his indictment for the crime of perjury, wherein he was charged with swearing falsely, that his title, as a freeholder, was *not nominal or fictitious, nor created for the purpose of enabling him to vote for a member to serve in parliament*. For, on this head, *finding it advisable to be more reserved and cautious than on the other articles of the charge*, the prosecutor had failed to set forth any such detail of facts and circumstances, from which it could be gathered, either what meaning he himself attached to this *mystical and litigious phrase of a nominal and fictitious title*, or which might enable the judge to discern, whether he were correct or not in his notions on that subject. In consequence, this part of the libel, and this alone, was found not to be so qualified as to import a relevant charge of perjury, upon which the panel may or can be remitted to the knowledge of assize."

The author concludes the whole of this matter with observing,† "The truth is, that the best confirmation of the rule, next to the obvious justice of the thing itself, is the uniform observance of it in the practice of later times, which has hindered many controversies of this sort from arising in Court, and is itself a daily testimony to the tenor of the law."

Now, though it is true that there are some exceptions from the strictness of this rule, arising from the necessity of the case, and though there are also limits to the rule, so that an unreasonable degree of minuteness shall not be required, the rule itself is fixed and peremptory, and the principles on which it depends are both clear in themselves, and such as demonstrate the necessity of it to the substantial justice of every trial in this Court. The informant hardly thinks it necessary to make any apology for the fulness of his statement on the subject, because he apprehends that it is substantially denied (though indeed admitted in words) throughout the information of the prosecutor.

The major proposition of this indictment consists entirely in a recitation of the clauses of the statute of the 37th of the king. The material part is in these words, "that every person who shall, in any manner or form whatsoever, administer, or cause to be administered, or be aiding and assisting

at the administering of any oath or engagement; purporting, or intending to bind the person taking the same to commit *ANY treason or murder, or ANY felony punishable by law with death*, shall, on conviction thereof by due course of law, be adjudged guilty of felony, and suffer death as a felon, without benefit of clergy."

The general crime here raised into the rank of a felony, consists in the administration of an oath. But the quality of the oath in which the essence of the crime consists, admits of the great varieties, and is described in the statute by a reference to certain other general denominations of crimes. It must be an oath purporting or intending to bind the party taking it to certain things; 1st, Purporting or intending to bind him to commit *any treason*; 2nd, Purporting or intending to bind him to commit *murder*; 3rd, Purporting or intending to bind him to commit *any felony*. The crime of the statute is not defined to any one of these obligations, nor does it require them *all* to make up the statutory offence. Each is a separate sort of offence of its own character, all under the same enactment of the statute, and all consisting in the administration of the oath.

But there are *many* sorts of treason; there are *many hundreds* of different felonies; there are murders which amount to petty treason, and murders of a different sort; but though the statute mentions murder, merely according to the uniform practice in all such English statutes, it does not speak of *any* murder as in the other cases. The statute does not distinguish the varieties of treasons and felonies. It provides, that the administration of an oath, purporting or intending to bind to commit *any* treason or *any* felony, shall be felony; and it leaves the precise definition of the particular crime to be settled according to the fact in each case. If the oath purports or intends to bind to commit *burglary*, that is the crime in that case; or to commit *rape*; and so of all the numerous felonies existing in the law. In the same manner, if it purports or intends to bind to *compass the king's death*, the administration of the oath having this purport or intentment is the statutory crime in that case. If it imports or intends to bind to *levy war*, that is the essence of the crime in that case. If it purports or intends to bind to counterfeit the king's coin, that is *the treason* in that case, the obligation to commit which is the basis of the offence. And so of all the other *eight* treasons which exist in the law.

It may be known to your lordships, that the three great genera of crimes in the law of England are *Treason, Felony, and Misdemeanour*. Every thing falls under one or other of these denominations.

* Hume, vol. 3, p. 319.

† Ibid. p. 320.

There are inferior classes; and sometimes the pleas of the crown are stated separately, as in this statute *murder* is put as distinguished from felony, the informant believes, according to the constant practice in such English acts, and perhaps in this case, with some view to the case of those murders which are *petty treason*. But, in general, *treason*, *felony*, and *misdemeanour*, are the *genera*, and comprehend every thing.

The same fact, which is properly a treason, may be also a felony. But as a *treason*, it is not comprehended under the denomination of *felony*. The same fact may be at the same time treason and felony; for example, to murder the king is an overt act of compassing the king's death, and so *treason*, and also *felony* in the *murder*. But the crime of high treason is an entirely distinct class; and your lordships will hereafter have to consider whether, in the case of the same fact involving both crimes, the felony does not necessarily merge in the treason. With this point the informant does not at present interfere. In the mean time, it is clear, that *treason* is used constantly throughout the English books as a *generic* term just in the same manner as the term *felony*, and one of the plainest illustrations is to be found in this statute, and in the very words founded on, where it speaks of *any* treason, or *any* felony, precisely on the same principle, referring to any one of the numerous treasons, or the still more numerous felonies, which exist in the law.

The informant shall venture, hereafter, to enter a little more fully into the subject of the treason law. But at present, he may be allowed to observe, that the separation of the different sorts of treason, or rather of *the different treasons*, is so clear, that the valuable statute of king William * for regulating trials of treason, &c. lays down a rule now in strict observance, that no person shall be indicted, tried, or attainted of high treason, but upon the oaths of two lawful witnesses, either *both* to the same overt act, or one of them to one, and the other of them to another, overt act of *THE SAME treason*." And Sir Michael Foster † in quoting the statute, prints the words "*the same treason*" in italics, to mark his clear understanding, that it must be two witnesses to separate overt acts of the same species of treason as a *distinct crime*. In the same manner, it is provided, by the fourth section of the same statute, that if "*two or more distinct treasons, of divers kinds*," be alleged in one indictment, one witness produced to prove "*one of the*

treasons," and another witness produced to prove another, shall not be deemed two witnesses "*to THE SAME treason*."

The statute of the 2nd and 3rd Anne, c. 20, makes it *high treason* for any officer or soldier to hold correspondence with any rebel or enemy, or to give advice, &c. to the king's enemies; and it makes it *felony* to raise mutiny or sedition in the army, &c. &c. And, by the 36th section of that act, it is provided, that the *treasons* and *felonies* before mentioned may be inquired of, &c. in the manner there pointed out. The treasons and the felonies are constantly spoken of in the *plural* number, as generic descriptions of two *classes* of crimes.

The statute of the 7th Anne, c. 21, § 3, the very act which extends the treason law of England to Scotland, speaks throughout of *treasons* in the plural number; and it specially provides, that the justice-court shall inquire of *all high treasons*, &c.

In general, therefore, there cannot be the smallest doubt, that, in the phraseology of the English law and statutes, *treason* is a generic term, descriptive of a class of crimes; and that, when the legislature speaks of *a* treason, or *any* treason, it means a *particular sort* or *description* of treason, or *any one* of *all* the particular species of the general crime.

But the plainest illustration for the present question is to be found in the other branch of the same clause of this statute, "*or any felony punishable by law with death*;" which, in this statute, is put exactly on a footing with "*any treason*." There are some hundreds of felonies in the law of England, and there are very many felonies punishable with death in the law of Scotland. But it is impossible for any Court to imagine, that, when this statute speaks of *any felony*, it means any thing more than to describe generally the nature of the offence, the administration of the oath binding to commit which shall be deemed felony, assuming that the particular felony, or particular species of the crime meditated, shall be defined in the indictment on which the charge proceeds.

Thus, the major proposition of this indictment libels a crime, consisting in the administration of an oath, binding the party taking the same to commit certain generic crimes, of which there are a great variety of species. The essence of the statutory offence must always be resolved into the thing, which the oath administered purports or intends, or at least is *alleged formally to purport or intend*, to bind the party taking it to do. It is in that only that the criminality does or can lie; and it is quite apparent, that the statute is so very general in its descrip-

* 7th William 3rd, c. 3.

† Foster's Crim. Law, 238.

tion of that thing or object, and comprehends so many particular cases, and particular descriptions of crimes, that it of necessity supposes a particularity of statement to be given in the indictment in each case.

The prosecutor has thought fit to pass over this part of the case altogether without notice. But your lordships, after attending to the true nature of the statute, which forms the whole major proposition of this indictment, will have no difficulty in perceiving the full force of it in relation to the material questions which remain on the minor proposition.

The informant is here immediately led into the several important questions, on which the relevancy of this indictment depends. "If the reasoning of the prosecutor is well founded, it would be very unnecessary to enter on any such inquiry. For, as far as the informant understands the statement in the information, it is, according to him, quite unnecessary to give your lordships an opportunity of judging of the relevancy of the indictment at all. He gives your lordships his theory in a short compass. "The prosecutor knows no addition that can make the syllogism more perfect. *Major.* The administering an oath of a particular description is a crime. *Minor.* You did administer the following oath; *Ergo,* You ought to be punished." And elsewhere † the prosecutor says, that "in this stage of the process, every thing is presumed to be done wickedly and maliciously, as libelled. And the question is, if all these things are as stated by the prosecutor, ought they to be followed by punishment? So clear is this rule, that things in themselves of the most innocent description, if libelled to be done wickedly, and maliciously, or for the accomplishment of some illegal purpose, are daily found relevant to infer the pains of law." With all deference, the informant must be allowed to say, that, in his humble apprehension, a more complete confusion of legal ideas has been rarely expressed in the same number of words. According to the prosecutor's dialecticks, this would be a complete legal syllogism, which your lordships must of necessity remit to a jury. "*Major.* The administering of an oath, purporting or intending to bind to commit any treason or felony, is felony. *Minor.* You did wickedly and maliciously administer an oath of the following purport, which purport is, that the party taking the same shall walk due mile every morning. *Ergo,* You must be punished with death." The prosecutor plainly assumes, that your lordships are not to judge of the relevancy of the minor proposition. If he shall

only be pleased to state, that that which he asserts to have been done was done wickedly and maliciously, your lordships must take it for granted that it amounts to the crime libelled in the major proposition, and is a sufficient description of the specific offence, and must leave it to the jury to determine whether the prosecutor shall prove any precise criminal act or not. If the informant has any comprehension of this, it is precisely a plea, directed to the object of taking the question of relevancy entirely out of the hands of the Court. It is just that case stated by Mr. Hume, where the prosecutor wraps his case up in mystery, in hopes of getting it passed to an assize; and then, if he can prevail on them, rightly or wrongly, to give him a verdict, compels your lordships to pronounce sentence against law and justice.

But an indictment under this statute cannot be framed on this principle. Your lordships must have the means of judging of the relevancy of the minor proposition: and you cannot send it to trial, on any such random assumption of what may by possibility turn out, as the prosecutor is pleased to present to you. It is perfectly true, that, in the question of relevancy, the facts averred in the indictment ought to be taken as true. But the mere averment of a felonious intention will not make relevancy, if the fact stated is either not in itself relevant, or not sufficiently specific, to enable your lordships to judge of its relevancy.

In order to sift more carefully the question concerning the relevancy of the minor proposition in this case, it is now necessary to consider the particular objections which the perusal of it immediately presents. And the informant shall here take the liberty of inverting the order adopted by the prosecutor, and of considering, 1, Whether the prosecutor was bound to state the particular treason, which he means to allege that the oath libelled on purported or intended to bind the parties taking it to perpetrate. 2, Whether there is any averment in this minor proposition, which can in law be taken as an averment that the party did administer an oath, purporting or intending to bind the parties to commit any particular treason; and, 3, Whether the oath libelled on, is an oath purporting or intending to bind the party taking it to commit treason. The informant adopts this arrangement, for reasons which will presently be very evident to your lordships. For he apprehends, that the objection to the relevancy of this indictment is not an objection of mere form, but an objection which enters into the substance of the whole charge. The prosecutor knows, that he dare not state his indict-

ment according to correct principles of relevancy, without shewing at once that, in the substance of it, it cannot be maintained. If he did not know this, it would be the easiest thing imaginable to frame a relevant indictment, as the informant will presently shew. But the prosecutor is now striving for the very object which has been uniformly reprobated in the history of the Court, to take the relevancy out of the hands of your lordships, and to obtain the chance of a verdict from a jury, on erroneous notions of the nature of the charge, and vague inferences from facts that are totally inapplicable to it. The question concerning the purport of the oath is a question of great importance; and if the informant does not mistake, the prosecutor has hazarded propositions on the subject of the most untenable and extravagant nature. But it seems to him to be first of all material, to see, what it was necessary for the prosecutor to state, in order to qualify and define the charge and allegation of fact in the minor proposition; and how far, independent of the terms of the oath, he has complied with the rules of law in that particular.

1. The informant humbly maintains, that it was incumbent on the prosecutor, in the minor proposition of the indictment to specify and define the particular treason to which he alleges the oath said to have been administered, purported or intended to bind the party taking it.

As the informant considers this to be a fatal objection to the indictment, and an objection which, though already twice distinctly explained, the prosecutor has found himself unable, by any amendment, to remove consistently, it must be presumed, with his knowledge of the facts of the case, the informant must beg the indulgence of your lordships in explaining it at considerable length.

If the foundation of this prosecution were the administration of an oath, alleged to purport or intended to bind the party taking it to commit a felony, the informant presumes that even the prosecutor would scarcely dispute that the particular felony must be specified in the indictment: He has indeed ventured to put the case of an oath, "binding to commit treason generally, or, in the words of the act itself, "any treason;" and has boldly maintained that it would be a sufficient libelling to state that fact. And he has also said a great deal about the impossibility of stating facts which were only in intention, and never took place. These doctrines the informant shall presently consider. But the prosecutor has entirely avoided the case of the oath alleged to purport to bind to commit a felony, and has not attempted an answer to the irresistible illustrations suggested in the hearing on

this point; and to this, in the first place the informant requests the attention of your lordships.

Supposing, then, that an oath had been administered, which the prosecutor thought purported to bind the party to commit a felony: How must he lay this in the minor proposition of the indictment? 1. If he were to lay it as the prosecutor suggests, in the words of the statute, would it not be manifestly no charge at all? "In so far as you did on the day of . . . administer an oath, purporting, or intending to bind the party taking it to commit any felony punishable with death." By such a charge, the panel would be left to conjecture, which of five hundred felonies he was accused of having bound the party to commit; and it is quite unnecessary to say, that it would be utterly irrelevant. 2. If the prosecutor libelled, that the oath purported to bind "to commit felony," or "a felony," or "some felony;" the indictment would in all these cases be plainly bad, as in fact containing no allegation of the panel having administered an oath, purporting to bind to the commission of any specific or known crime.

When this is stated in a general view, the truth of the proposition cannot possibly be denied. No prosecutor would have the face to present such an indictment to the Court. But the sort of reasoning which the prosecutor here applies to the case of treason, ought to afford him an equally good plea, in the case of an oath alleged to bind to commit felony; and the informant does not know that he will not maintain it. He may be supposed to state, that, besides alleging that the oath purported to bind to commit felony; he had recited the purport of the oath itself, and that from that purport, or the meditated acts implied in it, the particular felony intended might by possibility be collected; and that it is the province of the jury to determine, whether it is an oath binding to commit felony or not. The informant firmly believes, that such reasoning, if applied to the case of felony, would only require to be stated to shew the impossibility of maintaining it. But the informant shall take the liberty of observing, that, even if the precise fact which the oath was alleged to bind the party to commit were set forth, the indictment would be clearly bad, if it did not state the nature of the felony, the obligation to commit which was to be proved by the contemplation of the fact, to the performance of which the oath purported to bind. The act which constitutes, or affords the evidence of a felony, is not the felony itself. There may be many qualities in the same act, which essentially vary the legal denomination of the crime

arising out of it. The same act may be evidence of many different felonies. And of this no better illustration can be given, than that which was suggested in the debate. Suppose the prosecutor had libelled that the panel had administered an oath, purporting to bind the party to commit a felony, and that he had explained this, by stating, that he had administered an oath, purporting to bind the party to carry away a certain quantity of corn from the place where it was deposited, and deliver it to a certain shipmaster: When the panel objected to the relevancy of such an indictment, the prosecutor might answer as he does here—I have libelled the fact which took place, that the oath was administered, and I have libelled that it was done wickedly and feloniously: Let me go to the jury, and I will satisfy them that the fact which the party was bound to do by the oath was an act of *some felony or another*. If the Court permitted this, the panel might come into Court, believing that the prosecutor meant to say that the obligation intended was to *steal* the corn, and might come prepared to prove that it was his own property. He might then find, that the prosecutor did not intend to allege *theft*, but *fraudulent bankruptcy*. Suppose the panel were even prepared for this charge, and ready to prove that he was not bankrupt; he might then find, that the prosecutor meant to allege an engagement for abstracting the corn from a storehouse, and so to commit felony, under the statute of 11th Geo. 3rd. He might be prepared for this also, and able to shew that the case was not within the statute. But, though prepared for all *these* felonies, he might find the intention of the prosecutor to be, to prove that the oath purported or intended to bind the party to deliver the grain to a shipmaster who had been residing six months in France, and so to commit felony by holding intercourse with a person in that situation, contrary to the non-intercourse act of the Geo. 3rd.

But this is only an example of what runs through the whole law. The statutory felonies in England amount to many hundreds, and have been constantly increasing. Many of them are distinguished from one another by the nicest shades of difference, though consisting in the same direct act. But, unless the prosecutor were bound to state, what denomination of crime he alleged the oath to bind the party, taking it to commit, he might just as well be permitted to say in general, that it bound him to commit felony in the abstract, or *any felony*, according to the ingenious supposition of the prosecutor. The prisoner could only guess at the nature of the charge intended, and could only grope in the dark for the

circumstances most material for his defence.

The case of felony is indeed so very clear, that the prosecutor has not ventured to touch it. An indictment never could be sustained, which did not specify the particular species of felony which the prosecutor alleged the oath to bind the party to commit. The informant readily admits, that the prosecutor is entitled to assume the truth of the *facts* especially set forth. He only says, that the indictment must be sufficient *in point of averment*, and that, first of all, there must be a distinct *allegation* that the oath did purport or intend to bind to the commission of a *specific felony*. To say, that it bound to the commission of felony in the abstract, would be altogether nugatory, and could not be sent to a jury under any circumstances.

But the prosecutor directs himself solely to the case of treason; and, because it is more a matter of common language to speak of treason as a particular offence than to use the same expression as to felony, he presses your lordships to the adoption of a rule in the enforcement of this statute, in the case of an oath alleged to bind to the commission of a treason, which would be totally inadmissible in the case of an oath alleged to bind to the commission of a felony. But this is a very unsatisfactory way of resolving either the legal principle, or the substantial justice of this question. The statute here speaks of "*any treason*," and of "*any felony*," by phraseology identically the same: In both, it uses technical legal terms: And the effect of it must be resolved, not by any false impressions arising from the practice of familiar discourse, but by the true legal characters of the denominations employed. And whenever your lordships come to consider what treason really is in the contemplation of law, and what the legislature means, when it speaks in a statute of an obligation to commit *any treason*, the informant believes it will be found, that it is by far the clearest case of the two; and that, if the prosecutor would be bound to specify *the* felony, to the commission of which he alleged an oath to bind, it is still more necessary, that he should be required to specify *the* particular treason, to which he alleges the oath in this case purports to bind those to whom it is said to have been administered.

Here the informant finds himself in a very unexpected difficulty. The law of treason is matter of English law. It depends on statutes, and on the *dicta* and decisions of the judges and lawyers who have written and spoken on the subject. And the great body of this law of treason lies in the work of sir Matthew Hale,

which, from its first appearance to the present moment, has been looked up to as the foundation of every thing else that has ever been written or said on this most interesting branch of law. But, to the surprise of the informant's counsel, and they believe as much to the surprise of your lordships, the authority of that great judge and lawyer, equally profound in the learning of his profession, incorrupt in the exercise of his public functions, and most excellent in every private quality which can add dignity and value to the brightest talents, has been at once cast aside by the learned prosecutor, as of no weight in a question of treason; as disregarded by the judges of England, and as at once put down by the supposed silence of lord Loughborough, and by a few passages selected from the works of sir Michael Foster, serjeant Hawkins, and Mr. Hume. The informant never heard, that the name of lord Loughborough could be mentioned in a question of law, in opposition to that of lord Hale. The treatise of sir Michael Foster is undoubtedly of the highest authority. But, though on some few particular points, that great judge differs from the statements of lord Hale, the truth is, that his discourse is nothing more than a short commentary on the detailed law of treason, as laid down by sir Matthew Hale, which is throughout referred to, as the basis on which every succeeding writer must build whatever additions or changes the progress of time has suggested.

Judge Foster was a great lover of the Revolution establishment; and he has told us, in his preface to his first edition, that he attributed any mistakes into which lord Hale had fallen, chiefly to the opposite prejudices which he had early received on that subject. But he never speaks of him but with the most profound respect and veneration. "Why, therefore, may not a good subject, be it in season or out of season, caution the younger part of the profession against the prejudices which the name of lord-chief-justice Hale, a name ever honoured and esteemed, may otherwise beget in them? I, for my part, make no apology for the freedom I have taken with the sentiments of an author, whose memory I can love and honour, without adopting any of his mistakes upon the subject of government. It cannot be denied, and I see no reason for making a secret of it, that the learned judge hath, in his writings, paid no regard to the principles upon which the revolution and present happy establishment are founded. The prevailing opinions of the times in which he received his first impressions, might mislead him."—"He was undoubtedly very great in his profession; and, which raiseth even a great character in-

initely higher in point of real merit and esteem, he was, in every relation of life, a good man; though the rectitude of his intentions, while under the strong bias of early prejudices, might sometimes betray him into great mistakes." In another part of his work,* he has said expressly, in allusion to Hawkins, "This has been urged with some advantage by a good modern writer on the crown law, *the best we have* EXCEPT HALE." Thus plainly setting Hale at the head of all the writers on the crown law.

But the informant has said too much on this subject. The reputation of sir Matthew Hale as a lawyer, and his authority on the law of treason, will probably survive the cases of Edgar and M'Kinley. But it is worthy of remark, that the tendency of the prejudices to which Foster alludes, was a tendency, not in favour of the persons accused of treason, but against them, and in support of prerogative; and the only passage which the prosecutor has condescended to quote from Hale, is a passage which, whether just or not, is certainly of this tendency. The prosecutor will hardly obtain much benefit in this view, by applying to sir Michael Foster to set aside the authority of Hale.

It is, however, of more importance to take notice, that in truth, the most material point in which Foster's statement of the law of treason differs from that of Hale, is precisely that point to which the passages quoted from Foster by the prosecutor relate; and it is remarkable, that, in that disputed question, Hale and Foster each took the side which was likely to be the result of his own ruling opinions. The point itself, so far as it is here material, shall be presently attended to.

It is known to your lordships, that, previous to the statute of the 25th Edw. 3rd, the law of treason was extremely uncertain, so that, by means of the constructive treasons which were every day invented, or applied to particular cases, there was scarcely any breach of law or offence towards the government, which the spirit of party or of tyranny could not convert into a charge of high treason. Hale, after giving some examples, says, "By these, and the like instances that might be given, it appears how uncertain and arbitrary the crime of treason was before the statute of 25th Edward 3rd, whereby it came to pass, that every offence that was, or seemed to be, a breach of the faith and allegiance due to the king, was, by construction, and consequence, and interpretation, raised into the offence of high treason. And we need no greater

* Foster, p. 207.

+ Hale, P. C. p. 82, 83.

instance of this multiplication of constructive treasons, than the troublesome reign of king Richard 2nd, which, though it were after the limitation of treasons by the statute of 25th Edward 3rd, yet things were so carried by factions and parties in this king's reign, that this statute was little observed, but as this and the other party prevailed, so the crimes of high treason were in a manner arbitrarily imposed, and adjudged to the disadvantage of that party which was intended to be suppressed," &c.

Hale states a most remarkable example of this, which he undeniably gives as an instance of direct violation of the statute of Edward 3rd. In the 10th Richard 2nd, a commission for the redress of grievances was granted by the king, on the importunity of some of the great Lords and of the Commons, to the archbishop of Canterbury and others, which was thought prejudicial to the king's prerogative. After this, the king called together the two chief justices, Tresilian and Thirlinge, and other judges, and put various questions to them; among others this: "*Qualem poenam merentur, qui compulerunt sive uclarunt regem ad consentiendum confessioni dictorum statuti, ordinationis, et commissionis? Ad quam questionem, unanimiter responderunt, quod sicut ut proditores meritis puniendi.*"* There were eight other questions put to these judges, to which it is unnecessary to refer. It will be observed, that the crime attributed in the above question to the persons alluded to, was that of compelling or forcing the king to consent to a certain statute; and there could be no doubt, that that act was an overt act of high treason. But these judges took it upon them to say, that it was in itself a treason. And your lordships will now see, what Hale states concerning the result of these opinions. "This extravagant, as well as extrajudicial declaration of treason by these judges, gave presently an universal offence to the kingdom; for presently it brought a great insecurity to all persons, and the next parliament *crastino purificationis* 11th Richard 2nd, there were divers appeals of treasons by certain lords appellors, wherein many were convicted of high treason under general words of *accroaching royal power, SUBVERTING THE REALM, &c.* and among the rest, *those very judges, that had thus liberally and arbitrarily expounded treason in answer to the king's questions, were for that very cause adjudged guilty of treason, and had judgment to be hanged, drawn, and quartered, though the execution was spared; and they having led the way by an arbitrary construction of treason not within the statute, they fell*

under the same fate by the like arbitrary construction of the crime of treason." Accordingly, all these judges were banished to Ireland, except Tresilian,* who was executed according to the judgment. Hale states, that the tide again turned, and by the 21st Richard 2nd, the state of the matter was reversed; yet that act was afterwards repealed by the 1st Henry 4th; and Hale adds, † "Though the statutes of 1st Edward 6th, and 1st Mary, have taken away those treasons, which either the statute of 11th Richard 2nd, or 1st Henry 4th, had introduced, more than were in the statute of 25th Edward 3rd, yet it hath not taken away the efficacy of the parliaments of 11th Richard 2nd, and 3rd Henry 4th, as to their declarations, that the extrajudicial opinions of those judges were false and erroneous; but in that respect the parliaments of 1st Henry 4th, and 11th Richard 2nd, are of force, as to the DAMNING OF THOSE EXTRAVAGANT AND UNWARRANTABLE opinions and declarations." In concluding the chapter on "Treasons at the common law, and their uncertainty," Hale, referring to those examples in the reign of Richard 2nd, says, ‡ that, from such instances it appears, "How dangerous it is to depart from the letter of that statute, and to multiply and enhance crimes into treason by ambiguous and general words, as *accroaching of royal power, SUBVERTING OF FUNDAMENTAL LAWS, and the like; and how dangerous it is to depart from the letter of that statute, and by construction and analogy to make treasons, where the letter of the law has not done it: for such a method admits of no limits or bounds, but runs as far as the wit and invention of accusers, and the odiousness and detestation of persons accused, will carry men.*"

The statute of Edward 3rd, settled the law on this subject, by declaring all the treasons under defined and technical denominations; and lord Hale announces them in the following terms: || "The several high treasons hereby declared are these: 1st, The compassing of the death of the king, queen, or prince, and declaring the same by an overt act; 2nd, The violation or carnal knowledge of the king's consort, the king's eldest daughter unmarried, or the prince's wife; 3rd, The levying of war against the king; 4th, The adhering to the king's enemies, within the land or without, and declaring the same by some overt act; 5th, The counterfeiting of the great seal or privy seal; 6th, The counterfeiting of the king's coin, or bringing counterfeit coin into this realm; 7th, The killing of the chancellor,

* 1 St. Tr. 13; 14; 1 How. St. Tr. 117.

† Hale, P. C. 266.

‡ Ibid. 86.

|| Ibid. 91.

treasurer, justices of the one bench or the other, justices in eyre, justices of assize, justices of oyer and terminer, in their places, doing their offices."

Four other treasons have been introduced, 1st, With regard to papists; 2nd, In relation to impairing the coin; 3rd, Any attempt to obstruct the protestant succession, &c.; and 4th, By the 36th George 3rd, c. 37, it is made treason to *compass, imagine, invent, &c. to levy war*, in order to compel the king to change his measures or counsels, or to put him under constraint, &c. But your lordships will observe, that this last treason does not consist in any conspiracy for obtaining an alteration of the law, but expressly in a conspiracy to levy war for that purpose.

But the important point is, that by the law, as established by the act of Edward 3rd, and acknowledged ever since, whatever additional treasons may be introduced, there is a complete separation of the different existing treasons, or species of the generic crime. There is a defined certainty in the denomination which belongs to each; and nothing whatever can be described as a treason, which is not one or other of the treasons thus established in the law. In short, the separation of all the treasons from one another is as complete by the statute, and has been as anxiously insisted on by every writer, and by every judge, who deserves to be quoted on the subject, as the separation of the different species of felony.

Now, one of the most important consequences of this accurate definition of the various treasons existing in the law, is, that there is an essential distinction between every treason itself, and the overt act, or acts, which will be sufficient to support or to prove the charge of it. Lord Hale goes through all the treasons which had been declared in his time, and explains separately, what that particular treason consists in, and what overt acts shall be sufficient to sustain the charge. For example, treating of treason in compassing the death of the king, queen, &c. he considers separately*, "3, What shall be said a compassing or imagining of any of their deaths;" and, "4, What shall be evidence, or an overt act, to prove such imagining." Under the first of these heads, he says†, that the words *compass or imagine* "refer to the purpose or design of the mind or will, though the purpose or design take not effect." After explaining this, he adds, ‡ "Compassing the death of the king is high treason, though it be not effected; but because the compassing is only an act of the mind, and cannot of

itself be tried without some overt act to evidence it, such an overt act is requisite to make such compassing or imagination high treason. *De quo infra.*" And in a note it is said, "In so much that where the king is *actually murdered*, it is the compassing his death which is the treason, and not the killing, which is only an overt act.—Keling, 8." This was in the case of the regicides; and no more plain illustration can be found of the distinction between that which is treason in law, and that which is an overt act to prove it.

The treason by levying war, established by the 25th Edward 3rd, is also explained at great length; and lord Hale*, alluding to the clause of the statute, speaks of it as "this obscure clause of levying war against the king." Accordingly, this obscurity produced a controversy, which is the subject of the passages so anxiously quoted by the prosecutor from sir Michael Foster. The difference was just this. Lord Hale says†, that "to make a treason within the clause of this statute, there must be three things concurring; 1, It must be a levying of war; 2, It must be a levying of war against the king; 3, It must be a levying of war against the king in his realm." On the first of these points, he says‡, that it is a question of fact requiring many circumstances which it is difficult to enumerate or define, "and commonly is expressed by the words, *more guerrino arraiati*. As, where people are assembled in great numbers, armed with weapons offensive, or weapons of war, if they march thus armed in a body; if they have chosen commanders or officers; if they march *cum versillis explicatis*, or with drums or trumpets, and the like; whether the greatness of their numbers, and their continuance together doing these acts, may not amount to *more guerrino arraiati*, may be considerable." After stating that a bare conspiracy to levy war and provide weapons, &c. though it may in some cases be an overt act of compassing the king's death, is not treason under the head of the statute of levying war as a substantive treason; he adds; "Again, the actual assembling of many rioters in great numbers, to do unlawful acts, if it be not *modo guerrino*, or in specie belli, as if they have no military arms, nor march or continue together in the posture of war, may make a great riot, yet doth not always amount to a levying of war.—Vide Statute 3rd and 4th Edward 6th, cap. 5; 1 Mar. c. 82." This last is the point on which Foster differs. He says, that the true criterion is, *quo animo* did the parties assemble? That is, whether for a purpose of a

* Hale, P. C. 91, 92. † Ibid. 107. ‡ Ibid. 108.

* Hale, 148. † Ibid. 130. ‡ Ibid. 131.

private or particular nature, or for a purpose of general concern? and he says, * "But every insurrection which, in judgment of law, is intended against the person of the king, be it to dethrone or imprison him, or to oblige him to alter his measures of government, or to remove evil counselors from about him—these risings all amount to levying war within the statute, whether attended with the pomp and circumstances of open war or not. And every conspiracy to levy war for these purposes, though not treason within the clause of levying war, is yet an overt act within the other clause, of compassing the king's death." And then he explains, what shall be deemed a levying of war in this sense, "in construction of law," as distinguished from the direct levying of war against the king himself; and to mark the distinction between these, he adds, † what is also a clear matter of law (independent at least of the act of the 36th Geo. 3rd.); "But a bare conspiracy for effecting a rising for the purposes mentioned in the two preceding sections and in the next, is not an overt act of compassing the king's death. Nor will it come under any species of treason within the 25th Edward 3rd, unless the rising be effected. And in that case, the conspirators, as well as the actors, will all be equally guilty; for in high treason of all kinds, all the *participes criminis* are principals." And, for all this doctrine, Foster refers particularly to the cases of Damaree and Purchase in the reign of queen Anne.

Now, there is perhaps no very great difference, after all, between the doctrine of Hale and that of Foster. For, in the passage above quoted from Hale, he only says, that the assembling of rioters for unlawful acts, without the apparatus of war, "doth not always amount to a levying of war;" and though he does generally require the assembling *more belli* as a distinctive quality of the levying war, it is very doubtful, whether he would have differed at all from the judgment in the case of Damaree and Purchase. The object in that case was, the destruction of all meeting-houses of the dissenters; and though the persons assembled had not the regular accoutrements of an army, they were provided with implements proper for the purpose intended, such as "axes, crowes, and other tools, of the like nature;" and Purchase was taken when actually assailing the military with a drawn sword.

But it is unnecessary to pursue this inquiry. The informant cannot see, in what way it aids the plea of the prosecutor,

to shew this difference between Hale and Foster, unless, indeed, his meaning be, to throw aside the authority of Hale altogether, on other points, in which he is not contradicted, but confirmed, by Foster.

If the prosecutor could have shewn, that, in the cases of Damaree and Purchase, it had been held *not to be necessary to set forth that war was levied against the king*, but only to state the overt act of assembling to pull down all meeting-houses, the informant could understand the object of these quotations from Foster. But Foster himself* states that in those cases, "The indictments charged, that the prisoners, withdrawing their allegiance, &c. and conspiring and intending to disturb the public peace and tranquillity of the kingdom, did traitorously compass, imagine, and intend, to levy and raise war, rebellion, and insurrection, against the queen, within the kingdom; and that, in order to complete and effect these their traitorous intentions and imaginations, they, on the day of

at with a multitude of people, to the number of 500, armed and arrayed in a warlike manner, &c. then and there traitorously assembled, did traitorously ordain, prepare, AND LEVY WAR against the queen, against the duty of their allegiance," &c. The difference of opinion, therefore, such as it is, does not at all affect the distinct separation of all the treasons, as laid down by the statute, and by lord Hale. Foster does not make any thing to be treason in law, which Hale did not hold to be so; and the indictments in the cases of Damaree and Purchase were laid on the express allegation that war had been actually levied. The whole difference is, on the nature of the overt act which shall be sufficient to prove a levying of war: But, unless it be averred that war was levied, by whatever acts it is to be proved, it is clear, on every authority, that there is no allegation of a treason committed.

Another illustration of the difference between a treason itself, and the overt act by which it is proved, occurs in a point incidentally stated in the quotations above given. Before the act of the 36th of the king, a mere conspiracy to levy war was *no case treason*. This is stated expressly both by Hale and by Foster. Yet a conspiracy to levy war directly against the king, is held by them both to be an overt act of compassing the king's death; while both also agree, that, in the case of the constructive or interpretative levying of war, which is not so much against the king's person as against his government, a bare conspiracy to levy war of that kind is not even an overt act

* Foster, p. 210, 211. † *Ibid.* p. 218.

* Foster, p. 212.

of compassing the king's death. Your lordships see, therefore, that in the one case, a conspiracy to do *that which, if done, would be in itself treason*, is declared not to be treason, and yet to be an *overt act* of compassing the king's death, which is treason; and in the other case, the mere *conspiracy* to do that which would be treason, *as levying war* against the government, and so *constructively* against the king, is neither treason itself, nor even an *overt act* of compassing the king's death.

Keeping these points in view, the informant must now come a little closer to the precise point of difference between him and the prosecutor in this case. The prosecutor maintains, that he is not bound to set forth in the indictment the specific treason, which he means to allege the oath administered bound the party to commit. For if he is bound to set forth the specific treason, it will be an easy matter to shew, that he has not done so. He is obliged to admit, that if this were an indictment for treason, it would be bad, if it did not expressly allege what particular treason, under the statutes, the prisoner was charged with. At least, the informant presumes, that this must be admitted; because, if it is not, the contrary position would just be a revival of all the constructive treasons, and all the uncertainty which existed before the statute of Edward 3rd. It must be admitted, that the mere statement of an act, which might be an *overt act* of some known treason, would not be sufficient allegation of the crime of treason, unless the specific treason were in the first place stated; that is, *either* compassing the king's death, *or* levying war, *or* adhering to the king's enemies, &c. But the prosecutor says, that this is not an indictment for treason, but an indictment for administering a certain oath; and that he is not bound to state any thing more than the actual purport of that oath, and is entitled to infer thereupon, that it is an oath binding the party *to commit treason generally*.

This plea seems to be answered, the moment it is reduced to the common sense of the thing. The prosecutor could not indict a man for *any* treason, without specifying *the* treason. He could not indict a man for *any* felony, without specifying *the* felony. The legislature has provided, that the fact of administering an oath, purporting to bind the party to commit *any* treason, or *any* felony, shall be felony. Now, what is it that the essence of this statutory offence consists in? It is not in the mere administration of an oath, nor in secret meetings, nor in an obligation of secrecy, &c. It consists

solely in the *engagement* undertaken by the oath, to commit *a* treason or *a* felony. And what, then, is a treason or a felony in law? The general terms *treason* and *felony* indicate no legal idea, except by reference to the numerous specific treasons and felonies which are established in the law. The crime here charged, therefore, lies in the engagement to commit *one* or *other* of those specific and known felonies or treasons. To say, that it was an engagement to commit treason or felony, without specification, is to make an affirmation which has no meaning in law. If the prosecutor could not have charged the *act* in the same manner, if it *had been committed*, it is, with submission, impossible to make sense of the plea, that he is entitled here to charge the imposition of the *engagement* to do it as the crime of this statute. The crime is in the imposition of an engagement to commit *a* treason. But the prosecutor could not have charged a treason as actually committed, by stating the very same things as *done*, which he here says the party was *bound to do*: And, therefore, it follows, with submission, as clearly as any conclusion in Euclid, that this is not a legal charge, that an oath was administered, *binding the party to commit a treason*.

The prosecutor says more than once, that he cannot state or prove the manner and circumstances of an act which never was committed. But this is an entire misapprehension of the point; the informant is not requiring him to state the manner and circumstances of any act. What he requires is this: The prosecutor avers, and must aver, that the informant administered an oath, purporting or intending to bind the party taking it to commit a treason. The informant requires him to state, *what specific* treason the oath did purport to bind the party to commit? If he has a case at all, he *must know* what treason he means to say *to the jury* the oath bound the party to commit. If he cannot state that it bound to the commission of *a specific* treason, he has no right to try the informant upon this statute; and if he does know his own meaning, he is bound to state it for the information of the panel, and of the Court; and at any rate, without it there is no allegation of an oath to commit treason at all.

But, in truth, the prosecutor is ready enough to state what he calls the *act*, though only in contemplation. He has in all his indictments stated it nearly in the same way; and here he states it, by describing the oath to be an oath "*purporting, or intending to bind the persons taking the same to commit treason, by obtaining annual parliaments and universal suffrage, by physical strength or force, and thereby effecting the subversion of the*"

ESTABLISHED GOVERNMENT, laws, and constitution of this kingdom, by unlawful and violent means." This is indeed an averment of an act said to have been in contemplation in the administration of the oath. It is an averment of an act intended, which, if done, might have been an overt act of some treason. But it is not an averment of that as intended, which if done, would have been itself a treason. On the contrary, it is precisely such an averment as all the authorities have reprobated as a charge of treason, and for the statement of which, as treason, the judges of Richard the second suffered so severely.

It has been shown, that the same fact may be an overt act of many different felonies. But the same is true of treason. The same act may be an act of compassing the king's death, of conspiring to levy war, of adhering to the king's enemies, or an act of treason under the non-intercourse acts during the late war; and an oath binding to commit such an act must be precisely in the same predicament, and must be characterised in the very same manner that is necessary in regard to the act itself. Suppose a person administers an oath to another, binding him to deliver certain goods or money to a person in France. Allowing the prosecutor for the present to take his own views as to the meaning of the statute, when it speaks of the purport or intendment of the oath, it is obvious, that, supposing a treasonable intention, the act may be an overt act of many treasons. 1, The object may be, to bribe a person to come to England to murder the king. 2, It may be to raise troops, or purchase arms, in furtherance of a conspiracy to levy war. 3, It may be to give aid to the king's enemies; or, 4, It may be treason under the non-intercourse acts, by binding to the exportation of goods not jappanned.

But can it possibly be maintained, that the prosecutor, in such a case, would be entitled to lay simply the fact, that an oath was administered, binding the party to commit treason, by delivering the goods in the manner engaged for, without specifying the particular treason which he alleged to be thereby engaged for? Undoubtedly the prosecutor here maintains that he would. The panel so accused might come prepared to shew, that there was no compassing the king's death; that there was no conspiracy to levy war; and that there was no adherence to the king's enemies; and he might be caught in a capital felony, because the prosecutor proved the goods not to be jappanned, and adduced circumstances to infer that the exportation of such goods was the object of the oath; although, if the prisoner had known what the treason intended was, he could perhaps have proved, either that

the goods were jappanned, or that he had reasonable ground to believe them to be jappanned.

If it is clear, therefore, that, in alleging treason directly, it is quite insufficient to allege an act which may be an overt act to prove a treason; it seems to be at least equally clear, that, in an indictment for administering an oath alleged to bind to the commission of a treason, it cannot be enough to state the engagement to do an act, which, if done, would be an overt act of some treason. In both cases, the special treason intended must be set forth.

The prosecutor seems to suppose, that the circumstance of the present question relating to an engagement, or an intention, one step removed from the actual case of treason, is to have the effect of doing away all the rules of the law of treason, and admitting all the looseness of construction which has been so often, and so much condemned. But the informant shall put a case, where the very same thing must have existed, and yet where the attempt to state the overt act in place of the specific treason, could not be maintained for a moment. Suppose that before the act of the 36th of the king, there had been an indictment grounded on the fact of conspiracy to levy war to depose the king. As already explained, evidence of such a conspiracy would have been evidence of an overt act of compassing the king's death, although the bare conspiracy, not carried into actual effect, would not have been treason itself. Now, if the indictment had laid merely the fact, would it have been any answer to the objection of irrelevancy founded on the omission to lay compassing the king's death, to say, that the overt act had been laid, and that it belonged to the jury to infer the specific treason? The answer would have been, that it was not an allegation of any treason. Certainly, it could not have been listened to for a moment.

But there is another case, actually decided, and of a far stronger import than the present argument requires, which seems to the informant to be quite decisive of this whole matter. He refers to the case of *Rex versus Kendal and Roe*, decided by lord-chief-justice Holt in the reign of king William.* Kendal and Roe were committed prisoners to Newgate, by a warrant of the secretary of state, which authorised the keeper to receive them, "they being charged with high treason, in being privy to and assisting the escape of sir James Montgomery, out of the custody

* *Rex v. Kendal and Roe*; 7 William 3rd.; Raymond's Reports, vol. 1, p. 65, 66, 67; Salkeld, vol. 1, p. 346; State Trials, fol. 554 to 562; 12 How. St. Tr. 1299.

of William Sutton, one of his majesty's messengers in ordinary, and charged with high treason. You are to keep them in safe and close custody, until they shall be delivered by due course of law." A writ of Habeas Corpus having been obtained, by which the prisoners demanded to be admitted to bail, a question arose, whether this was a good commitment for treason; and different exceptions were taken to the warrant. The only one that is material is thus stated by lord Raymond: "*Lastly, The defendant's counsel took exception to the return, that the treason for which sir James Montgomery was committed, was not specified in the warrant of commitment. For perhaps sir James Montgomery's treason might be such as that the accessory to it should not be guilty of high treason. And if a man receive a counterfeiter of the great seal, knowing that he is a counterfeiter, &c. it is not treason, 12. Co. 81. Receiving of a coiner, knowing that he is such, is but misprision of treason. But Holt, chief-justice, said, that there was no authority, that a man who breaks prison, and lets out a coiner, is not a traitor. But he and all the Court were of opinion, that supposing the crime to be high treason, two things should have been specified in the warrant of commitment. 1, For what treason sir James Montgomery was committed; for he who breaks the prison is guilty of THE SPECIFIC treason. 2, It ought to have been averred, that sir James Montgomery committed the fact; because the breaking of the prison is affected with the same offence. And therefore, for this defect, the prisoners were bailed.*" Salkeld states the point shortly thus: Holt, chief-justice, held, "*3rdly, That sir James Montgomery's treason ought to have been inserted in the warrant, with an allegation that sir James did the fact; because the defendants, by breaking the prison, are guilty of the SAME SPECIFIC treason and offence; and for this cause they were bailed.*" In the State Trials, the case is reported at length; and lord-chief-justice Holt states this point in the following manner: "*But Mr. Attorney, the question is, whether you ought not to have specified these two things in your warrants, for WHAT treason sir James was committed? And my reason is, because the escape would be the same SPECIES of treason with that for which the party rescued was committed; and 2ndly, That he had done a treason, that sir James was guilty. But Mr. Attorney, will you further consider of it, though I think we must bail them in the mean time, an Habeas Corpus being a festinum remedium; but I would hear my brothers' opinions.*" The other judges, Rokeby and Eyre, concurred in this point, and the parties were bailed.

The informant cannot help adverting

to one of the arguments of the Attorney and Solicitor-General of that day, which his majesty's Advocate seems to have borrowed in the present case. "Then Mr. Attorney-General and Mr. Solicitor insisted, that the rescue of one in custody on suspicion of treason was treason, *that the setting forth the overt act was more for the advantage of the prisoner than barely alleging the species of treason,*" &c. His majesty's advocate seems to have adopted the same opinion against all the law of treason. But Lord Chief Justice Holt held a very different doctrine and decided accordingly.

It is evident, that the case of a warrant of commitment is a far stronger case than that of an indictment. Even if it could have been held, that the warrant of commitment for aiding the escape would be good, without specifying the particular treason; it would be quite impossible to state, that an indictment for *that* as treason would be good without specifying *the* treason for which the party who escaped had stood committed. But that is just a case of the same nature with the present. The treason there lay *immediately* in the act of aiding the escape, just as the felony lies here *immediately* in the act of administering the oath. But in the one case, the essence of the crime lay in *the* treason committed by sir James Montgomery, and in the other, it lies in *the* treason which the oath bound the party to commit. In neither is it possible to state *any* crime as committed, without alleging the *specific* treason *done* in the one case, and *undertaken* to be done in the other.

If your lordships will now look back to the statements of Mr. Hume in the passage formerly quoted, concerning the necessity of precision, accuracy, and a reasonable degree of minuteness; in the statement of the nature of the charge, and of the thing meant to be established against the prisoner, the informant presumes you will see the application which he intends to make of all the detail with which he has here troubled you. In some matters of mere technical expression, the rules of the law of England may be more strict even in indictments, than the rules of the law of Scotland. But in every consideration material in the present question, nothing can be more certain than that the very principle of a Scotch indictment necessarily requires more precision, more accuracy, and more minuteness, than ever was required in any English indictment. And yet the learned prosecutor will perhaps tell us in this case, that it is one of the "unseemly niceties" to which he is so fond of alluding, that a man should desire to know what the crime is of which he is accused, or that your lordships should desire to see,

that there is a crime in *averment merely*, before you allow an indictment to pass to the knowledge of an assize. The informant takes the liberty of saying, without the fear of reasonable contradiction, that, without the averment of a specific treason, as undertaken by the purport and intendment of the oath, there is no statement of any crime whatever. There is no statement of "the criminal deed," such as "*may distinguish this particular charge from all other instances of the same sort of crime.*" This is giving the prosecutor credit, for really intending to state a treason of some sort. But truly there is no averment of a crime at all; the statement being merely, that a man administered an oath, purporting to bind to certain acts, which are *totally unknown in the law of treason* as descriptive of *any treason*; and, on the contrary, absolutely decided by repeated judgments, both of the Courts and of parliament, not to be any known species of treason.

Unless, then, your lordships are to reject the principle of the law of Scotland, that the prosecutor must put it in the power of your lordships to see whether he has a relevant case before you will require the panel to go upon his trial; and unless it can be held that the prosecutor is entitled to withhold from the panel a knowledge even of the crime—the particular felony, or the particular treason—in which the whole merits of the charge against him consists; it seems to be very clear, that, without going any further, there is not even the appearance of relevancy in the present indictment.

II. The second point which the informant purposes to consider will not require a long discussion. It is, that this indictment does not in fact contain any statement of the particular treason, which the prosecutor alleges the oath to purport or intend to bind the party taking it to commit.

And yet the informant must be allowed to observe, that even here, though the prosecutor does not pretend to maintain that the indictment does state the particular treason, he still labours under a very important mistake as to the real state of the question. He says, that he is not bound to make any statement whatever, except a mere recital of the fact, or a simple allegation of the purport, of the oath.—An hypothesis more inconsistent with the practical rules of the law of Scotland cannot be conceived. But supposing it were so, your lordships will be pleased to observe, that the prosecutor has not in this instance followed that course. He has made his *averment* quite distinctly, of that which he is pleased to state to be *the treason*, which the oath administered bound the party to commit. And, with submission, nothing can be clearer in the

criminal law, than that, even when a party is not bound to make an averment on a particular point, if he does make it in a manner that is irrelevant, the whole indictment falls to pieces, on account of this irrelevancy. In the present case, the whole relevancy on the substance of the oath depends on the question, whether it did purport to bind the party to commit treason? The prosecutor says, he was not bound to make any averment whatever on this subject, and might have simply stated, that such an oath was administered, narrating the purport. The informant shall consider this. But, in the first place, the prosecutor has, in the indictment, stated what he held to be the purport and intendment of the oath. And truly, if your lordships were rid of every other question, you would be under the necessity of deciding, whether that statement contains a relevant allegation of *any treason*.

Now, what is the allegation? It is, that the oath bound to commit treason, "by obtaining annual parliaments, and universal suffrage, by physical strength or force, and thereby effecting the SUBVERSION OF THE ESTABLISHED GOVERNMENT, LAWS, and constitution of this kingdom, by unlawful and violent means." There is no denying that this is meant to be a statement of an oath binding the party to commit treason. But unless the law of treason, instead of being the most certain of all laws, is reduced again into the uncertainty of the treasons of Richard the second's time, it is impossible to maintain, that this is an allegation in point of law of any obligation to commit a treason.

The informant shall not here repeat what he has already fully detailed, concerning the result of the attempt, in the time of Richard the second, to defeat the act of Edward the third. But the words of lord Hale are certainly very striking, and apparently prophetic, where he says, that those proceedings shew "how dangerous it is to depart from the letter of that statute, and to multiply and enhance crimes into treason, by ambiguous and general words, as *accroaching of royal power, subverting of fundamental laws, and the like.*" The case of *subverting fundamental laws*, represented as a treason by Richard's judges, is the very case which the prosecutor has here adopted, and obstinately persevered in maintaining, in three indictments. But if this was not an allegation of treason in lord Hale's time, and was still less admitted by Foster, the prosecutor will find it difficult to produce even the vestige of an authority for so violent a revulsion to the tenets of one of the most arbitrary reigns that can be selected in the earlier history of England.

It is remarkable, however, that even the discussions and the statutes produced by these attempts in the time of Richard the second, to disturb the statute of Edward, are not without the support of express authority in a later period. The act of reversion of the attainder of the earl of Strafford, is a decisive confirmation of it. In those violent times, the very same thing was successfully practised. The bill of attainder * bears, that the commons of England "impeached Thomas earl of Strafford, of high treason, *for endeavouring to subvert the ancient and fundamental laws and government of his Majesty's realms of England and Ireland, and to introduce an arbitrary and tyrannical government, against law, in the said kingdoms; and for exercising a tyrannous and exorbitant power over and against the laws of the said kingdoms, and the liberties, estates, and lives of his Majesty's subjects.*" There were other charges; but this was the leading one; and on that bill, lord Strafford was attainted and executed, as all the world knows. Now the act † reversing this attainder begins in the following terms: "Whereas Thomas late earl of Strafford, was impeached of high treason, *upon pretence of ENDEAVOURING TO SUBVERT THE FUNDAMENTAL LAWS, and called to a public and solemn arraignment and trial before the peers in parliament; where he made a particular defence to every article objected against him; inasmuch that the turbulent party, then seeing no hopes to effect their unjust designs by any ordinary way and method of proceedings, did at last resolve to effect the destruction and attainder of the said earl, by an act of parliament to be therefore purposely made; to condemn him UPON ACCUMULATIVE TREASON, NONE of the pretended crimes being TREASON APART, and so could not be in the whole, if they had been proved, as they were not; and also adjudged him guilty of constructive treason (that is, of levying war against the king),*" &c. On these and other reasons, the statute bears, "for all which causes, be it declared and enacted, &c. that the said act of attainder is now hereby repealed, revoked, and reversed."

Nothing can be more precisely descriptive of the prosecutor's notion of a treason, than the very words, both of the bill of attainder, and of the act of reversal, in that very celebrated case. And whatever other merits might be involved in lord Strafford's conduct, the informant believes, that no lawyer in better times ever doubted that in this point the reversal declared the law correctly. It is in precise con-

formity to the very words afterwards employed by lord Hale, as well as to those of the statutes which condemned the judgment of Tresilian and the other unfortunate judges, who were weak enough to surrender the liberties of their country to the influence of the prejudices, or of the interests of the moment.

His majesty's advocate has had the merit of asserting in the present day, that a man had engaged *to commit treason*, who according to his lordship's own averment, was under an engagement simply to do the very thing, expressed by *the same words*, which Tresilian and the other judges lost their lives or liberties by declaring to be treason; and which the parliament of England long after declared *not to be treason*, by reversing the attainder of the earl of Strafford. And, with the full leave of the informant, he may take the further merit of maintaining that to be an averment of treason, which lord Hale has bestowed many anxious pages to prove to be merely one of those pretences of treason, by which, in bad times, the best principles of the constitution had been endangered, and the real interests of the country betrayed.

It seems, then, to be past all possibility of dispute, 1. That the prosecutor has not stated what the treason is, which the oath libelled on purported to bind the party taking it to commit; 2. That he has in fact stated that to be treason which is not treason; and the allegation of which, as treason, has been invariably condemned in all the best times of the law. And the informant believes that he has proved, 3. That an indictment under this statute, which does not state the specific treason referred to, cannot be relevant or competent to be sent to a jury.

III. The third part of this cause remains. Your lordships have to consider, whether the oath, the purport, if not the terms, of which, is set forth in the indictment, is an oath purporting or intending to bind the party taking it to commit any treason in terms of the statute.

But, before entering on the consideration of the words set forth in this libel, it is impossible not to take notice of the irresistible inference concerning the prosecutor's own knowledge of the fact, arising from the whole circumstances already detailed. It is here maintained, that the prosecutor is not bound to set forth the words of the oath at all, but only the purport which he ascribes to it.—Of this presently. But the prosecutor has set forth, in all the indictments, specific words, which he states as the purport of the oath said to have been administered; and which words, of course, he is bound to know to be as nearly as possible the words

* Trial of earl Strafford, p. 756. See also State Trials, 1641 [3 How. St. Tr. 1518.]

†—1770.

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of which he means to attempt a proof. But, before looking into the nature of the oath so expressly libelled on, it is quite impossible to overlook the circumstances under which your lordships are desired to consider the effect of it.

In the information of his majesty's advocate, there is an appearance of taking this case to be attended with no difficulty. But, considering that this is the third indictment which has been raised, and that on it your lordships have required informations, the informant is at least entitled to say, that, in the way the indictments of the prosecutor have been managed, they are involved in the most serious difficulties in point of relevancy. In saying this, the informant imputes no blame to the prosecutor, except that of an insufficient consideration of the case, before raising the first indictment, and too much perseverance in an untenable case; for he can draw no other inference from the whole course of these proceedings, but that really the prosecutor is *not able* to state, *in point of fact*, a case that would be *relevant* under this statute. If he could have done so, it is, with submission, quite inconceivable that, after all the discussion that has taken place, he should have exhibited this last indictment, exposed to every one of the objections, in point of substance, which lay against the two former libels. It is impossible to infer any thing from this perseverance in a wrong course, except this, that the prosecutor knows, that if he were once to lay the indictment as it ought to be, it would either be apparent that it was irrelevant, on account of a plain incongruity between the averment and the purport of the oath set forth; or, if the relevancy of it should be made out by strong averment, it would totally fail upon the *evidence*. Notwithstanding the very extraordinary charge on the words of the oath in this indictment, the informant gives the prosecutor credit for rejecting this last course. He does not believe, that the prosecutor would attempt to obtain an interlocutor of relevancy, by framing his indictment in a manner which he knew to be exposed to a necessary failure upon the evidence. And he must confess, that he attributes the whole failure in these indictments to this cause. The reality is, that the attempt to try the prisoners upon this statute has been begun without a due consideration of the nature of the case, and of the crime which the statute has created; and the prosecutor now finds, that he cannot, consistently with the facts of the case, libel the indictment in *the only way* in which a relevant indictment can be laid under this act of parliament.

The informant cannot otherwise, after all the discussion which has taken place,

account for the form of the present indictment. In the discussion, on the second indictment, it was very distinctly stated, by the counsel for the crown, that the treason which he meant to allege, as involved in the oath, was that of *levying war*. Now, *what difficulty could there be in stating this in the indictment in plain words?* The minor proposition would just have run thus: "In so far as you did wickedly and feloniously administer, or cause to be administered, an oath, purporting or intending to bind the party taking the same, to commit a treason *by levying war against the king*; which oath was in the following terms, or of the following purport." Supposing the purport of the oath set forth to support this statement, the informant sees at present no objection to the relevancy of it, as an averment to satisfy the terms of the statute; except, indeed, the objection of the felony merging in the treason. And why is it that the prosecutor will not make that averment? Considering the difficulties which your lordships have felt on this subject, it is quite impossible to imagine, that the prosecutor would avoid so very obvious a method of removing the first difficulty, after it had been twice clearly pointed out, if he had not solid reasons, in the substance of the case, for refusing to make the averment. The informant confesses he cannot account for the proceeding on any other hypothesis.

But if the pursuer cannot make the averment *in terminis* in the indictment, which he has already expressed in debate, can any other inference be drawn, but that the indictment must be irrelevant? He says, he means to *prove to the jury*, that the oath purported to bind the party *to levy war*. Then, why not so in the indictment? No reason on earth can be given, but one of three: either, 1st, The prosecutor has taken up a notion of his own about this indictment, against all law and authority, and he will not depart from it; or, 2dly, he knows that if he made the averment of *levying war*, the purport of the oath, which he must set forth, would show a plain irrelevancy; or, 3dly, If he got the indictment passed to an assize, the fact would not support the averment, and the jury could not fail to see it with perfect clearness. The informant considers the first supposition to be out of the question, and he by no means imagines it. But the two other explanations of the proceeding, he cannot but think to be the real truth of the case; because, considering the clear authority that is against the prosecutor in his present form of libelling, it is inconceivable, why he should not have removed the objection by so very simple a course of proceeding.

If the prosecutor thought, that by pos-

sibility the facts of the case might resolve into some other treason than that of an engagement to *levy war*, the informant is not aware that he would be tied down to this. If the indictment were in England, he might lay it under *separate counts*, as an engagement to *levy war*; an engagement to *compass the king's death*; or an engagement to *conspire to levy war*, &c.; and the informant is not at present advised of any objection that could be made to an indictment in this court, which laid the case *alternatively* as an oath binding to compass the king's death; or *otherwise* an oath binding to *levy war*; or *otherwise* an oath binding to *conspire to levy war*, &c. In other cases, as many alternatives may be taken. In a case of *rape*, it may be laid *alternatively*, *rape*; or *assault with intent to commit rape*; or *simple assault*; or *wounding* under lord Ellenborough's act. And other illustrations might be given.

Why the prosecutor has not adopted some such course as this, is quite inconceivable on any other supposition than that he knows the case could not be sustained if he were so to state it. And thus your lordships enter on the consideration of the purport and intendment of the oath, with real evidence before you, that the prosecutor dare not state, that the oath does purport or intend to bind to the commission of any specific treason. When your lordships look unto the oath set forth, and weigh the terms of it, you cannot be much surprised at the existence of this impression.

It is impossible to say a word concerning the construction to be put on the oath, as stated in the indictment, without first taking some notice of the very extravagant doctrines which are maintained in the information for his majesty's advocate.

It is first maintained, that the prosecutor is not bound to set forth the words of the oath at all, but only the purport; and that any oath, *however innocent*, if it were proved to be *intended* to signify an engagement to commit treason, might be a relevant ground of charge. The informant humbly denies this to be at all the meaning of this statute. He apprehends that the words "purporting or intending," were purposely employed, instead of those of the former statute, "purporting or intended," in order to exclude this construction. But, supposing it were otherwise, it would not avail the prosecutor. For even if it were admissible to set forth the oath of allegiance, or any other oath, however innocent in its purport or intendment, and then to prove that the actual intention was different from what appeared on the face of the oath, it is apprehended that nothing in the world could be clearer, than that, according to all the practice of your lord-

ships, the prosecutor must set forth specifically the facts, from which he meant to draw the inference of an intention different from, or stronger than, the purport and intendment of the oath libelled. In that case, the indictment would be bad for want of specification.

But, more generally, the informant must observe, that he knows of no principle, on which the prosecutor can be exempted from setting forth the oath alleged to have been administered. It is true, that, by the fourth section of the statute, it is provided, that he shall not be bound to state the very words of the oath, but only the purport of it. But he is still *bound to libel the purport*; and if the purport so libelled does not support the allegation of an oath, *purporting or intending to bind the commission of a treason*, the informant can discover no authority on this statute, for alleging, on any other ground, that a felony has been committed.

There are many analogous cases which may be suggested. The informant understands, that, in the law of England, it is quite settled, that in an indictment for *sending a threatening letter*, the terms of the letter must be set forth; and that, in like manner, in an indictment for obtaining money on false pretences, the false pretence must be stated. So also, in an indictment on the statute 39th Geo. 3rd. c. 106, against agreements among workmen *for controuling* their masters, the words of the agreement alleged must be libelled on. But the informant cannot desire any case more analogous than one which is distinctly laid down in our own law, that of an indictment for *perjury*, where, as the question turns precisely on the terms of an oath, the rule has a direct application to the present case. And the informant shall return to that case, as soon as he has adverted to another very extraordinary doctrine of the prosecutor.

It is maintained in this case, it is believed for the very first time in a criminal court, that there is no presumption in favour of innocence, or at least none which can weigh with your lordships in this question of relevancy. When the prosecutor says merely, that, in a question of relevancy, the first act of the mind of a judge is to assume the truth of all the facts charged, the informant understands what he means; and though the statement has no tendency to prove the relevancy of an indictment, in which there is no allegation even that any specific crime was committed, and far less any specification of facts to support it, the informant has no occasion to dispute the general proposition. But the prosecutor has gone a great deal further. The question concerning the purport or intendment of this oath, is a question of

construction and relevancy by itself; and whether it belongs to the judge or to the jury to consider it, there must be some rule of judgment to turn the scale, on the supposition that any doubt hangs over it. The informant's counsel took the liberty of suggesting the very obvious and common-place rule of law, that in all trials for crimes, there is a presumption in favour of innocence, which runs through the whole proceedings, and is applied to the indictment—to the proof—to the verdict; and he remarked the peculiar importance of giving full effect to it, in a case where the whole charge turns on the import of words which may admit of various meanings, and may be understood by different persons in very different senses. It seemed to him, that the principle of judgment in such a case must necessarily be, that, if the words alleged are *at all susceptible of a meaning consistent with innocence*, the accused, who stands on the peril of life and death, must have the benefit of that construction; and that it could not be a good allegation of administering an oath, purporting to bind to commit a treason, where the oath averred is of a purport which *may either* be reconciled with the supposition of perfect innocence, or at least with some bad or even criminal purpose of a much lower denomination. He did not mean that, by far-fetched and extravagant conceptions, some colour of possibility could be raised. He only maintained, that if, upon fair and just construction, the oath set forth did not *necessarily* purport an obligation to commit a treason, he was entitled, by the established presumption of law, to take the more favourable or less criminal construction, and to object to the allegation, as not a relevant statement of an oath purporting to bind to the commission of any treason.

All this appeared to be so very trite and clear, that an apology was even thought necessary for insisting on it. But the prosecutor has here a case of that unmanageable nature, that he is obliged to reject even the most established maxims of law, and to invert the plainest rules of justice. In his information,* he has told your lordships explicitly, that "it is submitted, that if the words of the oath are *at all susceptible of the meaning put upon them by the prosecutor*, and may bear that meaning, your lordships are bound to give him credit for the truth of that CONSTRUCTION which he puts upon them. It is quite a mistake to say, that he must shew, in this question of relevancy, that the words *must of necessity* bear the criminal meaning. If, indeed, the criminal meaning be *plainly a forced*

construction, and one which they cannot reasonably bear, your lordships might hesitate as to sending them to a jury, unless it were alleged that they have a hidden or different meaning from what they express. But if the meaning be neither forced nor unnatural, or if it be *at all a reasonable, OR EVEN A POSSIBLE construction*, the prosecutor is entitled to the verdict of a jury on the charge, and to demand the assumption of the truth of every allegation he makes in the preliminary stage of the process." If your lordships are prepared to admit this statement of law, it will be in vain to object to the relevancy of any indictment. But the informant must remind the prosecutor, that the *allegation* of a construction is not the allegation of a *fact*; and, what is still more remarkable, that the prosecutor has not, *in fact*, made any proper allegation in this indictment, of the construction which he puts on the oath; and is actually maintaining, that he is not bound to do so. But is it really true, that, if the words set forth by a prosecutor, or his averment of facts, which is the same thing, are *at all susceptible* of a criminal meaning, or can, *by any possible construction*, be made to bear it, the indictment must be held relevant? This is an inversion of all the rules of criminal law. What is a question of relevancy? It is, whether the facts averred, if proved as stated, amount to, or *legally prove the crime charged*. But do they prove it, if it is merely that, by *any possible construction*, they may admit of the criminal meaning? Is not the rule just the contrary, that, supposing all the facts proved, if they do not *necessarily*, or according to fair necessary conclusion, prove or amount to the crime charged, there is no case made out, and the presumption of innocence prevails? The question of relevancy, before proof, is just the same to the court, on the assumption of the facts averred, as the question of *guilty or not* is to the jury, on the *actual state of the proof*. If a jury could not legally convict on an admission of all the facts averred, but not of the prosecutor's constructions, the court cannot find the libel relevant. The question is just the same in both cases, and the presumptions in favour of innocence must have at least the same weight, in considering the prosecutor's averments before proof, which they confessedly have in the construction of his proof after it is led.

When the prosecutor was propounding this new principle of criminal justice, the case of a trial for perjury might have occurred to him; and he might have asked himself this question—Is an indictment for perjury good, though the thing alleged

* Inf. p. 379.

to have been sworn, is perfectly reconcilable with innocence, if, by any possible construction, it may bear the supposition of wilful falsehood.† The informant shall answer the question in the words of Mr. Hume.* “The substance of the crime, and that which all the other particulars in the description of it only modify and limit is, that a plain falsehood be explicitly and wilfully affirmed. For, if either there is ANY DOUBT about the true state of the fact, or about THE SENSE IN WHICH THE PANEL’S WORDS ARE TO BE UNDERSTOOD; OR IF THEY CAN IN ANY REASONABLE WAY BE RECONCILED WITH THE TRUTH, OR WITH AN INNOCENT INTENTION, or, in general, if it is not manifest and obvious, but matter of likelihood only, and of inference and comparison of many particulars, that he had a false and corrupt meaning, this shall save him from the accusation of perjury. Indeed it would be very dangerous to commit any one upon such constructive grounds; considering the imperfection of language, and the still more imperfect use which so many persons have of it, and how unequal their degrees of intelligence in the affairs of life, and even their degrees of capacity for the observation of facts.” The learned author quotes cases in support of this statement, in which libels for perjury were found irrelevant, precisely because the oaths as averred did not “absolutely exclude” the supposition of innocence. And he thus proceeds:† “For the same reasons which suggested these decisions, it is more especially requisite, that in all processes for perjury, the prosecutor be not allowed to lay his libel generally, or in ambiguous terms; since otherwise he would take the cognizance of the relevancy of the charge to himself, out of the hands of the Court, to whom of right it belongs. He has to explain, therefore, wherein it is, that the falsehood lies, and must support (or as we say, qualify) his charge with such a statement of the circumstances of the fact, as justifies his averment of a false oath having been taken, and shall ground a clear inference (if they be proved) concerning the situation of the panel’s conscience on the occasion. It was, accordingly, for want of such a detail and explanation, that one part of the libel was found irrelevant in the noted case of Lawson of Westertown.”

The informant presumes he has said enough on this singular doctrine of the prosecutor, and that, whatever opinion your lordships may form on the purport of this oath, in point of relevancy, he may at least rely on your lordships giving to him, in this case of capital arraignment founded on words alone, all the benefit of

those presumptions of law and reason, which protect innocence even against trial on loose and doubtful allegations.

In taking notice of the remarks made by the informant’s counsel, on the terms of the oath, the prosecutor has been pleased to allude to the obligation of secrecy, and in connexion with it to add,* “An amiable feature of the whole transaction, and which affords a pleasant commentary on the panegyric that was pronounced at the first debate, on the ‘brotherhood of affection,’ in which it was said to be so ‘becoming that all the subjects of this country should dwell together in unity.’” It is impossible not to feel some surprise at this passage; for, undoubtedly, no such sentiment was expressed by either of the informant’s counsel. An argument was indeed maintained to show, that the proposal of establishing a brotherhood of affection, did not of necessity imply any criminality, or that criminality which is meant to be charged in the indictment. But no panegyric was pronounced; and in general, it was admitted, that the oath might be improper and dangerous, and might raise suspicions of criminal designs. It would, therefore, have been more correct, if the prosecutor had withheld an insinuation so perfectly groundless.

The prosecutor has libelled the purport of the oath, which he says was administered; and it is somewhat remarkable, that he should come to a trial of so serious a nature as this, in such uncertainty as to the words which were really used, that he can at pleasure substitute one word for another, as it suits his argument on the question of relevancy. But as he was bound to aver the purport and intendment of the oath, and has accordingly set forth the words which he says contain the purport of it, it is for your lordships to judge, whether, if an oath in such terms was administered, it is an oath purporting or intending to bind the party taking it to commit a treason. This is a question quite distinct from the question already considered, as to the necessity of setting forth the specific treason. Supposing that the prosecutor had libelled an engagement to commit treason by levying war, or any other specific treason, and had then set forth this oath, the question is, whether it comes up to the averment, that it was an oath purporting or intending to bind to the commission of a treason?

But, in this part of the question, the prosecutor is under another mistake. Assuming that he is not obliged to state the specific treason, he further takes it for granted, that your lordships are not to be satisfied that the oath does purport or intend to bind to the commission of a

* Hume, vol. i. p. 127.

† *ibid.* 129.

* *Inf.* p. 376.

specific treason. But, with submission, whatever opinion may be entertained on the other point, it is quite impossible that your lordships can hold that this indictment is relevant, unless you are satisfied, that the purport of the oath set forth is such, that you are now prepared to affirm that it does purport or intend to bind to the commission of some specific treason. Unless your lordships can reject all the accumulated authority on the law of treason, and proceed on the old vulgar notions of treason in the abstract, consisting in any thing imaginable that is disagreeable to the existing government, it is impossible that you can hold the purport of the oath libelled to be an obligation to commit treason, until you are satisfied what treason it does purport or intend to bind the party to commit. The informant says, that the prosecutor is bound to state what the treason is. But allowing him to get rid of this difficulty, it is at all events necessary, that your lordships should see that the oath averred does purport to bind to some specific treason. Without this, there is no end to the looseness of such an indictment. For, if your lordships cannot tell what the treason is, how is the panel to discover it? How are your lordships to judge of the relevancy? How are the jury to judge of the application of the evidence? The jury must give a verdict indeed; but the very thing which the law intends to prevent, by requiring an interlocutor of relevancy before allowing the case to go to a jury, is the risk of erroneous inferences, or incorrect views of the law, and verdicts of conviction which are not warranted by any sound or logical charge.

Your lordships will look, then, into this oath, keeping it in mind that you must make up your opinions, that it does purport or intend to bind to the commission of some specific treason. The prosecutor has said, that the treason is that of levying war; and yet it is very remarkable, that he has not now ventured to state this in his information. The truth seems to be, that the moment the case is reduced to the test of a defined treason, it is only by a most violent stretch of the terms of the oath, and by the aid of presumptions and suppositions not supported by any facts libelled, that it can be maintained to be an oath purporting to bind to the commission of treason.

The prosecutor endeavours to distinguish the word purporting from the word intending, and represents the latter as having reference to the intentions of the parties, whatever may be the terms or apparent purport of the oath. The informant submits, that this construction is altogether inadmissible; and he understood your lordships, to have long ago in-

timated a clear opinion, that these words, "purporting or intending," do not refer to the intentions of the parties, but to the purport and intendment of the oath itself. The informant does not mean by this, that the prosecutor is tied down in his proof to the very words which he sets forth in the indictment, so that if he should prove words slightly differing from them, he would not be entitled to a verdict. Both these words may perhaps seem to exclude this supposition. The informant might admit, that neither the purport nor the intendment means the same thing with the tenor of an oath. But when this is admitted, which at once answers a great part of the prosecutor's reasoning, it is still true, that the purport and intendment being stated must show *ex facie* a relevancy. The oath, as stated in point of purport and intendment, must be an oath which, in the judgment of your lordships, does purport and intend to bind the party taking it to commit a specific treason. Still it does not depend on any latent intentions of the parties. It is the purport and intendment of the oath that must determine the relevancy of the indictment; and the opinion of your lordships on that point is not to be altered by any supposition of concealed views in the parties.

The remarkable change of terms, between this statute and the former act against unlawful oaths, very strongly confirms this view, as being the real meaning of the legislature. In that former act, the words were, "purporting or intended to bind," &c. The word "intended," as opposed to "purporting," might be supposed to refer directly to the intention of the parties, and so to mean, that though the oath might not exactly purport an engagement to commit a treason, yet it was so understood and intended by the parties. The statute now before your lordships is a much more severe statute, raising that into the rank of a capital felony, which, if the meaning were exactly the same, was before only a felony, with benefit of clergy. Here, it must be supposed, the legislature looked with greater care to the form of expression; and though they made it capital to administer an oath, purporting to bind to the commission of a treason or felony, or an oath intending to bind to the commission of a treason or felony, they did not think it expedient to extend the punishment of death to an act of so very loose a character, as that of administering an oath, which, though not bearing, even in purport or intendment, any obligation to commit a treason or a felony, might, by construction, inference, or implication, be represented as so meant or intended. The difference between these two things is manifest; and yet the prosecutor has been pleased, without taking any notice of the

argument, and in the face of what was understood to be expressed as the opinion of your lordships, to assume at once, that if there is the slightest pretence for suspecting an intention in the parties to administer or take an oath to commit treason or felony, the crime of the statute is committed.

There is an important distinction which the prosecutor entirely overlooks. To administer an oath which is intended to bind the parties to commit treason, is undoubtedly a great crime; it is perhaps clearly within the former statute; but, at all events, it is punishable on other grounds. But, though a great crime, it may not be the crime of this statute. The informant has no doubt, that the prosecutor could have libelled the case which he alleges in his information, though not in the indictment, as a crime severely punishable in the law of Scotland. But the question on this indictment is, whether the oath as libelled is within the particular statute; and there the question is, whether it purports or intends to bind the party to commit any treason. And this is humbly apprehended to be an entirely different thing from any supposed intention in the parties to an oath which has no such purport or intendment.

One consideration may serve to show the very great difference between the terms of the statute, and the prosecutor's construction of them. When your lordships are considering the purport or intendment of an oath, writing, or speech, you are entitled to infer from the words, that both the parties understood and intended that which was expressed. But if your lordships are required to look into the intentions of parties in the use of words which do not purport the intention assumed, it is evident, that the one party might intend a meaning, of which the other never thought for a moment. The administrator of the oath might have meant to impose an obligation to commit a treason, while the taker received it in its plainest meaning and purport, and never thought of the hidden design. In such a case, it could never be said, that the oath was an obligation purporting or intending to bind the party to commit treason, when the party taking it was altogether insensible of any such meaning. In the same manner, the party taking it may understand an obligation to commit a treason; and yet this may be totally unknown to the administrator, from whom the secret intention may be entirely concealed, and who may, in plain good faith, administer a perfectly innocent oath, having no such purport, and no such intendment. This just shows the great and essential difference between the two things; and the informant humbly apprehends, that, considering the terms of

this statute, he is entitled to the strict and true meaning of those terms, as fixing a rule totally different from that of the extraneous intentions of the parties.

But your lordships will observe, that in reality the prosecutor in this case has not put himself in a situation to plead the point in the way he attempts to plead it.

He has not stated in the indictment, that the oath was intended or understood to bind the parties in any other way than according to its express purport or intendment. There is no allegation of a concealed or different meaning, far less any specification of facts to support such an allegation. In truth, therefore, there is here no room for this discussion. For whatever it might be competent to a prosecutor to libel under this statute, surely there can be no doubt, that if he libels the purport of an oath, and makes no special averment of a different meaning, and no specification of facts to infer such a supposition, he must be held to confine himself to the purport set forth, as indicating the intention both of the administrator and the receiver of the oath. Here, accordingly, the prosecutor does confine himself to the purport stated. For as to his statement of secret meetings, and the numbers to whom the oath is said to have been administered, it is quite absurd to allege, that such circumstances are of the slightest relevancy, to give any effect to the oath which its purport and intendment do not warrant.

The question then is, what this oath purports and intends by its terms to bind the party taking it to perform? In considering this, the prosecutor always assumes, that there is no other alternative but to suppose, that the oath either bound the party to commit treason; or was perfectly innocent. But this is a supposition altogether erroneous. It may be admitted, that, without reference to some other objects, this oath was in a high degree improper; that it was highly criminal; that it was of an extremely dangerous tendency; that it was the duty of the public prosecutor to take notice of it, if the facts were true; and that it might, with the utmost propriety, have been made the subject of an indictment. Supposing all this, the question remains, whether it is an oath binding the party to commit a treason? Nothing, therefore, can be more irrelevant or inconclusive, than to state circumstances in the oath which indicate improper or criminal views. They may be very relevant to show such intentions; but what your lordships are bound to determine is, whether the oath purports to bind the party to commit treason. Supposing that the prosecutor libelled, as he does, that the party administered an oath purporting to bind

to the commission of a *treason*, and that your lordships were satisfied that it purported to bind to commission of a particular *felony*, the criminal intention would be clear enough, but the irrelevancy of the indictment would be equally clear. Or, supposing that it were libelled in the same way, and your lordships were satisfied that the administration of the oath amounted to a *sedition*, or was meant to excite a *riot*, the criminality would be plain enough; but it would make nothing towards showing that the indictment might be sent to an assize. It is most important to remember, that the law of treason is the most sacred and delicate of all subjects in the law, and that this is an indictment which *either* involves an engagement to commit a *treason*, and nothing else, or is *totally irrelevant*. The blame or criminality imputable to the parties in other respects is totally immaterial to the question.

Look, then, into the terms of this oath. The informant does not intend to detain your lordships with any long or minute criticism. He does not agree with the prosecutor, that your lordships can desire no assistance from any remarks on the oath; and he so far differs from him as to the obvious purport of it, that he thinks no person can read it, and say that its purport is to commit treason of any kind. He may suspect bad intentions; he may even suspect treasonable intentions. But this is not the point. It has been the prosecutor's object throughout to escape from all legal precision, and to take away the life of the informant on some rough and unmeaning conclusions of a criminality which he cannot define. But the question is, whether the oath purports the commission of a treason, and, according to the verbal statement of the prosecutor, it truly is, whether it purports *an obligation to levy war*.

The party swears, "that he will persevere in his endeavours to form a brotherhood of affection among Britons of every description who are considered worthy of confidence." It was said, that this implied an association of prodigious extent. Perhaps not; for it is limited by the ideas of confidence which the parties entertained. But though it were ever so wide, that would not make the obligation to form it an obligation to commit treason. It does not even imply criminality by itself, though it may be rendered criminal by the objects in view. He next swears to "persevere in his endeavours to obtain the elective franchise for all persons of the age of twenty-one, not disqualified by crimes, &c. and annual parliaments." The prosecutor may state, and those who argue the case of the informant will agree with him, that nothing more unconsti-

tutional, nothing more absurd, nothing more mischievous, nothing more necessarily leading to despotism, and to the destruction of the liberties of the country, could be suggested, than this proposal of universal suffrage and annual parliaments. But if there is any liberty in this country, it permits the subject to entertain, and even publish, speculative opinions, which are unconstitutional, absurd, and even mischievous, if they do not tend to any direct breach of law. If there is any thing certain in the law of treason (and it is the most certain of all laws), the pursuit of such objects has not the least relation to any treason, and does not even infer the slightest suspicion of an intention to commit it.

But the sting of this oath is supposed to lie in the words which follow, "and that I will support the same to the utmost of my power, either by moral or physical strength (or force), as the case may require." It is not clear to what the words, "support the same" refer. They may refer to the *brotherhood of affection*, or to the *endeavours* for obtaining annual parliaments and universal suffrage themselves when obtained. If there is any doubt, your lordships will interpret favourably. And this is the more necessary, when you consider the nature of this offence. There might be very mischievous designs in the person or persons who originally framed this oath; and yet, if it was administered to hundreds, as the prosecutor says, probably nine-tenths of them did not understand it. At all events, they might put different constructions; and if the plain grammar of the sentence admits of applying the words "to support the same," to the objects when attained, the informant is entitled to the benefit of that construction; and in demanding it, he is not asking any force upon the words which they do not fairly bear, but only that reasonable allowance for the imperfection of language, and the various understandings of it, which all writers agree must be given in such a case.

But, allowing the prosecutor to apply these words to the *endeavours* for obtaining universal suffrage and annual parliaments, can any man say, that they *purport* an engagement to *levy war against the king*? The party is to support his endeavours to the utmost of his power, either by his moral or his physical strength, as the case may require.

If it had been that he was to support them to the utmost of his power, without any addition, would it have been an engagement to commit treason? Those words would have comprehended *all that is expressed* by the words as they stand: They would have comprehended both moral and physical strength, both moral

and physical force. The informant supposes, that the prosecutor would not have said in that case, that this was an engagement to commit treason. And why would he not have said it? For no reason that the informant knows, but that, though a man may intend to levy war, in order to obtain annual parliaments and universal suffrage, this is not to be inferred, merely because he engages to support his endeavours for obtaining them to the utmost of his power. All his powers, moral and physical, are included in the terms; and yet the purport of an engagement to commit treason could never be stated. The informant confesses, he can see no solution of this, except by what the prosecutor is pleased to call a "reservation of illegality." In plainer terms, that presumption of innocence, by which words, which admit of an innocent construction, or of a construction which is not treasonable, are not to be extended or twisted, so as to make out a guilty or traitorous design.

If the words had been, "That I will support the same to the utmost of my power, with my whole moral strength," the design might equally have been to commit a treason: For undoubtedly, a treason may be committed by moral strength alone—by writing letters,—furnishing money,—giving advice,—giving information,—encouraging, comforting, persuading others. But yet the prosecutor would scarcely have inferred an obligation to commit treason, if the oath had been so expressed. And why not? For no reason, but that, though treason might be so committed, the presumption of innocence would not allow the engagement to be so construed, when so many other suppositions, consistent with innocence, could be made.

The prosecutor's case, then, lies entirely in the supposed effect of the words, "or physical strength;" or, as he has now been pleased to express it, "or physical strength (or force)." Now, it is true, that a man who undertakes to levy war may, and most probably will, exert both moral and physical strength; but it does not follow, that every man, who engages to support certain endeavours for obtaining a public object, either by his moral or physical strength, as the case may require necessarily binds himself to levy war, or to do any act of treason. 1, It is not an engagement to levy war, because the occasion may never arise. The parties may be contented with the exertion of their moral strength, and may even accomplish the object by these means. But 2, There are just as many ways in which physical strength may be lawfully exerted for attaining such an object, as there are ways in which moral strength may be lawfully

exerted. A man may make journies—he may print books—he may make speeches—he may work to procure money to pay the expense—he may erect hustings—he may use his physical strength in keeping off the crowd at a meeting—he may defend the meeting against an illegal attack. Innumerable other suppositions may be made, demonstrating, that the exertion of physical strength no more necessarily implies levying war, or any treason, than the exertion of moral strength does. But, 3, Either moral or physical strength may be employed unlawfully, and yet not have the least tendency to become an overt act, either of levying war, or of any other treason. A man may resist a magistrate, who requires the dissolution of an assembly, under the late statute; he may arrest a member of parliament illegally; he may murder a prime minister; and he may do innumerable other minor acts, contrary to law, all for the purpose of accomplishing the object of annual parliaments, and universal suffrage; and yet it would be impossible to state that he had levied war, or was guilty of treason. There is no denying these things, and the prosecutor has not attempted to deny them.

But what is the consequence? It is, with submission, quite inevitable, that the engagement to support his endeavours by his physical strength, if the case may require it, is no more an engagement to levy war, or to commit treason, than the obligation to support those endeavours to the utmost of his power generally, or to support them by his moral strength, would be. For the very same principle of judgment applies. The thing engaged to be done may include the case of criminality, but it also may be reconciled either with a lawful intention, or with the contemplation of acts, which, though not lawful, have no relation to treason. The presumption in favour of innocence comes in, and the "reservation of illegality" is just as admissible, and as necessarily implied in this case as in the others.

Make the supposition for a moment, that this oath were legal and binding, according to its terms: The party bound might be obliged to make great exertions in order to obtain the object of annual parliaments, &c. But if he were required to murder the king, could it be stated that that was part of his engagement? Or suppose that he were required to murder his own father, or his own wife, or his own child, could it be said, that, because he had engaged to support his endeavours for a particular object with his moral or physical strength, as the case might require, he had therefore engaged to commit all manner of atrocities without distinction? It is plain that the engagement never could admit of such a construction.

The prosecutor's mistake is nearly the same, which he has announced in his general plea to the relevancy, when he says, that if, by *any possible construction*, the oath may bear the supposition of a treasonable design, that is enough to make it relevant. He assumes, that every imaginable case of the exertion of physical strength is undertaken, although he will not make the same supposition in the case of *moral* strength or *power* in general. But the informant humbly maintains, that, as he could exert his power, and exert his moral strength, and exert his physical strength, *all alike*, either *lawfully* or *unlawfully*, either *treasonably* or not *treasonably*, he is entitled in the last case, just as much as in the others, to the most favourable construction, and to hold, that the engagement was merely to use his strength in a lawful manner; but that, at all events, it did not purport an engagement to levy war, or commit treason.

The additional term '(or force),' which the prosecutor has introduced into this indictment, surely cannot alter the state of the question against the informant. It is stated as an alternative or synonymous term, though plainly not synonymous, and introduced for that very reason; and the introduction of it only shews the very uncertain data on which this prosecution has been raised. But it may be observed, that the prosecutor has not told your lordships, *which* of these two words was employed, in any of the *particular* cases in which he charges the oath to have been administered by the informant; and he is here endeavouring to make a relevancy by mere guess, without affirming that the word now introduced was *actually* used in *any one* of the cases libelled in this indictment,

If the prosecutor means to say, that this was an engagement to support the endeavours by a combined physical force, it is an idea completely inconsistent with the words of the oath. For your lordships will remember, that it is "*my endeavours*" that are to be supported, and the engagement is, "that I will support the same to the utmost of *my* power;" the reference being constantly to individual exertions alone. It is only by construction, and the most violent implication, that this idea of a combined force can be at all maintained as involved in this oath. And, in short, it is impossible to call this an engagement to levy war, without entirely departing both from the rules of law on that subject, and from every correct idea of the qualities which are necessary to such an engagement.

The remainder of this oath contains an engagement to secrecy, to which the prosecutor frequently refers. But an engagement of secrecy, however improper it may be in itself, and however it may raise suspicions, and even belief, of criminal designs, will not make this oath to be an oath purporting to bind to levy war, or commit any treason, if there is no engagement of *this purport* in the rest of the oath. Such oaths of secrecy are known to exist, and that with peculiar sanctions, in societies which are not deemed to be contrary to any law. But even supposing the society to have had bad designs, it does not follow that there was an engagement to commit treason; and your lordships will not violate the law, and proceed on principles of constructive treason, merely because the prosecutor has not taken the right way of putting a stop to proceedings which might be dangerous or illegal.

It is time to conclude this discussion. Your lordships are here called on, for the first time, to decide on the relevancy of an indictment laid on a statute in the highest degree penal. The act was passed with a view to particular circumstances, which do not, and never did exist in this country; and the truth is, that those who made it had more in their view the case of oaths binding to commit murder and other felonies, than the case of an oath binding to commit treason. Perhaps the case of treason was not well considered. But be this as it may, it is humbly submitted, that, exclusive of the separate point, which is to be argued, if there was here an oath administered, purporting or intending to bind the party taking it to commit any known treason, there was no difficulty whatever in laying a relevant indictment for that offence. But it is now apparent, that the prosecutor's difficulties originate in the substance of the case. He *cannot* aver that the oath purported or intended to bind the party, *either to levy war, or to compass the king's death, or to conspire to levy war, or to adhere to the king's enemies, &c.* He sets forth an oath, which purports to bind to none of these treasons; and he refuses to make the averment, in direct violation of all the rules of criminal indictments, plainly meaning, and almost avowing his intention, *to take the relevancy of the charge entirely out of the hands of the Court.*

In respect whereof, &c.

JAMES MONCRIEFF.

July 10, 1817.

SUPPLEMENTARY INFORMATION

FOR

ANDREW M'KINLEY, *present Prisoner in the Castle of Edinburgh,*

AGAINST

ALEXANDER MACONOCHE, *Esq. of Meadowbank, his Majesty's Advocate, for his Majesty's interest.*

The prisoner has next to submit to the Court a view of the question totally different from those he has already offered, and in arguing which he is to proceed on the assumption, that those views which he has already stated are erroneous. For the purpose of this argument he is to assume, that the oath does, in its terms necessarily, and by due construction, purport and intend to bind the persons taking the same to commit treason; and that the specific treason, to the commission of which it did purport and intend to bind, is sufficiently set forth in this indictment.

Then the prisoner says, that the treason there set forth is, and can be, no other than the "levying war against the king, in order, by force or constraint, to compel him to change his measures or counsels, or in order to put force or constraint upon both Houses, or either House of Parliament."

The accusation is, that the prisoner "did, at secret meetings, and other occasions, at Glasgow, or in the immediate vicinity thereof, wickedly, maliciously, and feloniously administer, or cause to be administered, or did aid or assist at the administering, to a great number of persons, to the amount of several hundreds, an oath, or engagement, or an engagement, or obligation in the nature of an oath, purporting or intending to bind the persons taking the same to commit treason, by obtaining annual parliaments and universal suffrage by physical strength or force, and thereby effecting the subversion of the established government, laws, and constitution of this kingdom, by unlawful and violent means."

The prisoner has endeavoured to satisfy your lordships, that this is not such an accusation as is sufficiently precise to put a person upon his trial either for felony, or for high treason, or for any other crime. The crime provided against by the statute, is the administering an oath, purporting or intending to bind to the commission of any treason. Whether the oath does purport or intend so to bind, is a question of legal construction, and it depends on two propositions, *First*, What act it is which to do, the oath purports or

intends to bind; *Secondly*, Whether that act be a treason. This latter question depends on the words of certain statutes, and your lordships, in determining whether any act done, or proposed to be done, is, or would be, an act of treason, must look to the words of those statutes, as they are expounded by the decisions of the Courts, and must be satisfied that such act comes, or would come, within such words so expounded. This it is which, by your interlocutor of relevancy, you must necessarily declare, and this you cannot do, unless the words of the indictment are so framed that your simple affirmation of the proposition there set forth may amount to a distinct and sufficient judgment in law, that the fact alleged to be projected would, if carried into execution, amount to one or other of the treasons declared by statute. Your lordships, in your interlocutor of relevancy, cannot vary from the terms of the indictment. By finding this indictment relevant, you do judicially declare, that "to obtain annual parliaments and universal suffrage by physical strength or force, and thereby to effect the subversion of the established government, laws, and constitution of this kingdom, by unlawful and violent means," is treason legally and sufficiently described.

The prosecutor affirms, that the oath purported to bind persons to commit treason, and that it bound them to do so by doing that which is here set forth. The doing that, therefore, he affirms to be the committing of treason, and he desires of your lordships to pronounce a solemn judgment of this Court, declaring that it is so, in the terms with which he has supplied you. An indictment, therefore, against any person for committing treason, alleging that he has done what it is herein set forth that the oath in question purported to bind the persons taking it to do, and stating that allegation in the terms here employed, must hereafter, under this judgment of your lordships, be a good and valid indictment of treason, since it would be conceived in terms which your lordships have decided to be, in an indictment, a sufficient description of treason.

But there are no treasons in the law, unless by the 25th Edward 3rd, or some subsequent statute, and your lordships cannot declare this to be a legal and sufficient description of treason, without declaring it to be a legal and sufficient description of some treason declared in that or some subsequent statute.

The declaration demanded of you by his majesty's advocate is not, that the committing a particular act *would amount to an overt act of some specific treason declared by statute*; but he desires that you should

find that this is a *sufficient description of a treason, declared by your lordships.*

In none of the statutes does this appear as the description of any sort of treason; and the demand of the prosecutor is this, that your lordships, of your authority, shall declare *a new treason*, which is contrary to law, and would be matter of impeachment. For it is a contradiction in terms to say, that your lordships can declare that an oath purports to bind to the commission of high treason, because it purports to bind to do acts falling within a certain description, without declaring that that description is *a description of treason*; and it is a contradiction in terms to say, that it is *legally and sufficiently alleged* that an oath purports to bind to the commission of treason, by binding to do acts which would come within a certain description, without declaring that such description is *a legal and sufficient description of treason.*

Now, high treason is of two general descriptions. There is one which consists in the compassings and imaginations of the mind; and another, which consists in the doing some act. Treasons of the former description must be manifested by something actually done and performed, by which the treasonable compassing may be known; and to the due allegation of such treasons two things are necessary: *First*, To set forth, and legally to describe, the compassing and imagination constituting the treason; and, *Secondly*, To set forth, with sufficient accuracy, the act done, from which such compassing and imagination is inferred. And the setting forth the act only, is not setting forth the treason, but what is meant to be given in evidence of the treason, and which can never constitute treason, till that from which an inference is drawn be confounded with that which is inferred; or until the evidence adduced shall be deemed the same thing with the averment which it is intended to prove.

In the second description of treasons—those which do not reside in the mind, but which consist in some act performed—the *description of the ACT is the description of the TREASON.*

In describing the treasons which reside in the mind, *the compassings and imaginations must be described in the terms of the statutes which declare them to be treason*, and the overt act must be so stated, that, if proved to follow from such compassings and imaginations, it will amount to a manifestation thereof. In treasons which consist not in the intentions or wishes of the heart, *the fact committed must be set forth in the words of the statutes declaring it a treason.* Nor can, in either case, the statutory language be departed from, without holding out *a new definition of treason*, or demanding that the treason which is described in the

statutes *may be inferred by construction*; both of which are directly contrary to law. If it be said, the description given is a description of what would constitute an overt act of some treason, then the prisoner replies, A description of the overt act is not a description of the treason, but of the evidence of the treason merely. The Court and the prisoner are entitled to have the treason alleged, of which the overt act it is said would be evidence, that the former may judge whether it would be so, and the latter may prepare to defend himself, by shewing that it would not. It is to no purpose to say, that the sort of treason is apparent, and the inference from the overt act quite plain. The rule must be general. Either the treason must be set forth in all cases, or it is necessary in none. The legal form of indictments cannot vary, by the capricious estimate that may be made of the convenience or inconvenience of dispensing with them in particular cases. If, in this case, it be unnecessary to set forth the treason, then this must be held for the general rule in indictments on this statute and equally the rule as to oaths purporting to bind to commit *felonies*, notwithstanding their indescribable number and variety; though it is obvious that in many, or in most cases, this rule would be wholly inconsistent with justice.

If it be said, the thing alleged to be projected is itself the treason, then the prisoner replies, It is not a treason described in any of the statutes.

But in what he is now to offer, the prisoner, for the sake of argument, admits that this position is a mistake—that the description here given is a sufficient description of high treason—that it is not necessary to follow, in this instance, the words of the statutes by which the various treasons are created or defined—but that it is enough if the description be such as to convey to ordinary apprehensions, that the fact, if committed, would fall, or might fall, under some of the known legal descriptions of treason. The prisoner, therefore, must set himself to consider of what species of treason a person ought to be indicted, who hath done that which, in common language, and to a common intent, the allegation in the indictment would or might convey.

It is obvious, that no other treason can be meant than that of levying war against the king. It may involve the compassing and imagining the death of the king, because the levying of war against the king may well be an overt act of such compassing and imagining. For your lordships know that it is laid down by lord Hale,* that “any assembly to levy war

* 1 Hale 128.

against the king, either to depose, or restrain, or enforce him to any act, or to come to his presence to remove his counsellors, or ministers, or to fight against the king's lieutenant, or military commissionate officers, is an overt act, proving the compassing the death of the king, for such a war is directed against the very person of the king, and he that designs to fight against the king, cannot but know at least it must hazard his life." And in *the case of John Friend*,^{*} who was indicted of high treason, in compassing and conspiring the death of the king, lord chief justice Holt lays down the law, that "If there be only a conspiracy to levy war, it is not treason; but if the design and conspiracy be either to kill the king or depose him, or imprison him, or put any force or restraint upon him, and the way and method of effecting of these is by levying a war, then the consultation and conspiracy to levy a war for that purpose, is high treason, though no war be levied; for such consultation and conspiracy is an overt act proving the compassing the death of the king."

Now if the loose words of this indictment are to be construed as describing any sort of known treason, the obtaining by physical strength that which effects the subversion of the established government, laws, and constitution, may be an assembly to levy war against the king, to depose him, and can hardly by construction, if treason may be made matter of construction, be less than the levying war to enforce the king to some act, or to put a force or restraint upon him, since it cannot be supposed that the king will consent to such subversion, and since he cannot consistently with his duty and his oath, but oppose it at all hazards. But to effect this subversion by unlawful and violent means, through the obtaining annual parliaments and universal suffrage by physical force or strength, if they are words sufficiently certain and precise to amount to a legal allegation of any sort of treason, can mean nothing else than a levying of war, in order, by force and constraint, to compel the king to change his measures or counsels, or at any rate in order to put force or constraint upon both Houses, or either House of parliament, since annual parliaments, and universal suffrage cannot be obtained but by an act passed by the two Houses, and by the king, and if this passing be obtained by violent means, which violence amounts to treasonable violence, it can be no other than the putting such force or constraint either upon his majesty, or upon one or other House of Parliament, as is above mentioned.

Further, if the levying of war, meant

here to be imputed, be, as has been said against the king's person, the compassing the king's death is the treason, and the conspiring to levy such war is an overt act thereof; under the statute of 25th Edward 3rd. If the war to be levied were for the purpose, by force or constraint, to compel the king to change his measures, in order to put force on both Houses, or either House of Parliament, the compassing or imagining to levy such war is declared to be high treason during his majesty's life, by 30th Geo. 3rd, c. 7; and of necessary consequence, the conspiring to levy such war is an overt act of such compassing and imagining.

It cannot be doubted that the administering, at secret meetings, and on other occasions, to a great number of persons to the amount of several hundreds, an oath, purporting or intending to bind these hundreds of persons to levy such war, amounts to a conspiring, and to an overt act of compassing such levying of war.

The prosecutor, therefore, is in this dilemma from which it is impossible he should escape. Either he has not sufficiently charged the felony under the act creating it, because he has not sufficiently alleged that the oath purported to bind to commit any treason;—which the prisoner says he has not: Or if he have sufficiently charged it, which the prosecutor says he has, then what he has charged amounts to an overt act of high treason; and this the prisoner undertakes to satisfy your lordships cannot be tried on the indictment of the lord advocate, or according to the mode of trial which in this case has been adopted. The prisoner is aware, that mere words, unaccompanied by any acting or any measure taken, do not constitute an overt act of any sort of treason, though, in particular cases, where the security of the subject appears to have been less regarded than the jealousy felt by the Crown, it has been otherwise held; but it never was doubted, that the assembling of persons, together to conspire, or to consider of, or to bind themselves to commit, an overt act of any treason which consists in compassing and imagining, is in itself, without more, an overt act of such compassing and imagining. Thus, "if there be an assembling together to consider how they may kill the king, this assembling is an overt act to make good an indictment of compassing the king's death."^{*} And in the case of *Somervill, Arden, and others*,[†] it was resolved by all the judges of England assembled, "that as to Arden and the rest, that they conspired with the said Somervill, and procured him to undertake to commit the

^{*} 4 St. Tr. 625, 626. [13 How. St. Tr. 61.]

^{*} 1 Hale, P. C. 119.

[†] 1 Anderson's Rep. 106.

treason which was to destroy the queen, was sufficient overt act, since they were assembled to this purpose, and procured or engaged him; for otherwise the procurers of treason might always escape punishment, if, after their procurement, they did not proceed further." And to the same purpose sergeant Hawkins says, "It hath been resolved that conspiring to levy war against the king's person may be alleged an overt act of compassing his death."*

The accusation in this indictment amounting in substance to a charge of high treason, manifested by an overt act, the prisoner humbly maintains, as consequent on this, three propositions:

1st, That this accusation, amounting to an accusation of having committed an overt act of treason, cannot, by the general and established rules of law, be tried as a felony under this or any other statute.

2ndly, That by positive statute, 7th Anne, c. 21. it cannot be tried in Scotland, by the ordinary forms of the Court of Justiciary, or on an indictment by the lord advocate.

3rdly, That there is nothing in the act 52nd Geo. III. c. 104. on which this indictment is laid, which abrogates the rule of law above mentioned, or repeals the said statute of queen Anne. Neither is any such alteration of the law to be inferred from any legal construction of the words of this statute of the king; nor is there any reason to believe that the legislature entertained any such intention.

1st, The prisoner humbly maintains, that the accusation against him, resolving in substance into a charge of high treason, cannot be tried as a felony.

The prisoner need hardly state, that the law of Scotland was, by the said act of queen Anne, rendered the same in matters of high treason with that of England. The act declares, that what is treason within England, shall be adjudged treason within Scotland; that nothing shall be treason in Scotland which is not treason in England; and that the trial of treason in Scotland shall be the same as is used in England. Therefore the two questions, 1st, What is treason in Scotland? and, 2ndly, How that which is treason shall be tried in Scotland? must be determined by the English law. In these respects, the law of England is a part of the law of Scotland; and if it be thus generally introduced into this country, and ingrafted upon our national law, it cannot be doubted that it was introduced wholly and entire, that all its principles and rules are our principles and rules in these matters, and that your lordships, wherever a question of high treason arises, are as much

bound to judge according to the principles which govern the courts of law in England in such cases, both of what constitutes the offence, of the mode in which it must be set forth and alleged, and of how it may be tried and investigated, as, in a charge of theft, you are bound to adhere to the common and statute law of Scotland, to the principles of our own municipal institutions, and to the course of procedure established by the practice of your predecessors in the Court of Justiciary. To talk of introducing a system of law from a foreign country, in an extensive and important branch of the law, rejecting at the same time any of those rules and maxims which in its own country attend that part of its institutions, and regulate, extend, restrain, or modify their application, is in terms a contradiction, and would be in practice worse than an absurdity.

If, therefore, the facts charged in the present indictment would amount, according to the English authorities, to high treason, and if such facts committed in England could not be tried there as a felony,—if it be true that, in case of a trial in England for a felony, the trial must, by the law of England, be stopped, if the facts came out in evidence such as they are here alleged, and no verdict or judgment of the felony could be pronounced on such evidence,—then the prisoner maintains, that by the law of Scotland, this being the same in this matter as the law of England, no trial for felony can proceed in Scotland on this charge. If it could, then it is obvious, that the law of treason in England would be no longer the law of treason in Scotland, and the mode of trial in England would be no longer the mode of trial in Scotland; for offences amounting by the law of England to high treason, might nevertheless be tried in Scotland by a form of trial, by which the same offences could not be tried in England.

On this part of the subject the prosecutor has divided his argument into two averments.* 1st, That the principle of the common law of England founded on, has no application to any trial in this Court, according to the law of Scotland. And, 2ndly, That even in England it has no application to a trial for an offence against the act of the 52nd of the king.

To the second question the prisoner will have to address himself hereafter. In the meanwhile, he is anxious to confine your lordship's attention to the first, because if it be true that the principle of the law of England has no application to this trial, it were vain to inquire further what that principle is.

* Hawkins, P. C. B. 1, c. 17, § 27.

* Information for his majesty's advocate, p. 390.

To the manner in which the prosecutor has met this objection, the prisoner's counsel can hardly undertake to do justice, since they are compelled to confess, that there is much of his reasoning which they dare not pretend to understand. For the seeming respect with which he condescended to honour that stated at the bar for the prisoner, the prosecutor has thought it necessary to apologize, by accounting for it from the impression on his mind at the time, that the argument must have something in it he was unable to discover; and to atone for it by declaring, that he has now ascertained that there was no discovery to make. The prisoner's counsel are by no means in this situation. On the contrary, from the beaten track of an inquiry into the application of some simple and well-known principles of law, they have found themselves suddenly transported into unexplored regions, where discoveries are made at every step, and propositions equally new and surprising start up at every turning.

In one sentence* the prisoner finds, 1st, That "though it is understood to be a principle in English law, that if a man be tried for an offence as a felony, which in fact amounts to treason, he must be ACQUITTED;" yet "there is no authority for saying, That a man cannot be TRIED for felony when his offence amounts to treason." And, 2ndly, "That the jury alone can judge, WHETHER HE HAS COMMITTED TREASON OR NOT." The first of these propositions amounts to this, that where a man cannot be lawfully convicted, he may yet be lawfully tried; and is so stated, *totidem verbis*, in the next sentence but one, for it is said, that "this objection derived from the law of England is AN OBJECTION TO A CONVICTION, AND NOT TO A TRIAL." So that it is no objection to the putting a man on his trial, that no conviction can follow, nor any reason why your lordships should not send an indictment to the knowledge of an assize, that, if all the facts are proved as laid, the assize cannot lawfully convict. That is, the Court and jury are to sit and try causes for the amusement of my lord-advocate, or the attorney-general, where no result can take place; and prisoners are to be exposed to torture, and to danger, for the sole purpose of this inhuman diversion. And this it is said, "the terms of the act (52nd of the king) show, which take for granted, the possibility of a trial for an offence under the act, which offence may turn out to be treason. If no person can be tried for an offence against the act, which offence may at the same time be treason, this clause implies an absurdity." What this clause does imply, will

be afterwards shown. But assuredly it implies no such absurdity as this, that it meant to authorise the trial of persons under circumstances in which they cannot be lawfully convicted.

But if this proposition be astonishing, the second, by which it is meant to be supported, is not less so. The counsel for the prisoner had always believed, that whether certain facts amounted to a certain crime, was a *question of law*—of which, in Scotland, the Court disposed on the showing of the indictment, by their interlocutor of relevancy—and on which, in England, as the facts came out in evidence, the Court may stop the trial, or direct an acquittal, or direct a special verdict; and which, after trial, may be judged of there by the Court, either on a special verdict, or on a motion in arrest of judgment on the evidence. They have now learned, that they have all along been miserably deceived, for they have it on grave authority, that "whether what a man has committed be treason or not, *the jury alone can judge*;" and "that one accused of felony cannot be acquitted on the ground that he has committed treason, *unless the jury are satisfied of this upon the evidence*."

These, and some other observations, are stated to be *such an answer as may be made in an English court to this objection*. This the prisoner must be permitted to doubt; although it appears to the prosecutor *quite conclusive and satisfactory*.

But the argument* by which the prosecutor would prove, that "the principle of the law of England, as to the merging of felony in treason, has no application whatever to trials before the criminal courts of Scotland," is too curious to be passed over.

It is said, that "it will not do to say generally, that the whole doctrines of the English law, as to treason, have been introduced into Scotland;" though it is admitted to be enacted by the statute of queen Anne, that "all crimes and offences which are treason in England shall be treason in Scotland." And it is asked, "whether this compels the prosecution of any crime as treason, *which may be tried under another and lower denomination*?" With great deference the question is, *whether or not it may be so tried*? It is quite true, that the rendering of those offences treason in Scotland which are treason in England, would of itself make no alteration in the mode either of prosecution or of punishment. But the act goes a great deal further. For by section 3, it is enacted, that "the justice court, and other courts, having power to judge in cases of high treason and misprision of high treason in Scotland, *are required to*

* Inf. p. 388.

* Inf. p. 390.

enquire by the oaths of twelve men in the shire or stewartry where the courts shall sit, of all high treasons and misprision of high treason committed within the shires or stewartries, and thereupon to proceed, hear, and determine offences, whereof any person shall be indicted before them, in such manner as the court of Queen's bench, or justices of Oyer and Terminer in England may do. And if any person be indicted of high treason, &c. before any justices of Oyer and Terminer, or of the Circuit Courts, &c. upon the request of the queen's advocate general, the lord chancellor shall award her majesty's writ of *certiorari* directed to the justices of Oyer and Terminer, &c. commanding them to certify such indictment into the justice court, which court is required to proceed upon, hear, and determine the same as the court of Queen's bench in England may do; and all persons convicted or attainted of high treason or misprision of high treason in Scotland, shall be subject to the same corruption of blood, pains, and forfeitures, as persons convicted or attainted of high treason or misprision of high treason in England."

What is there wanting in this act to make up the proposition, that "*the whole doctrines of the English law as to treason have been introduced into Scotland*?" There is here a declaration that the same thing shall constitute the offence; that the mode of inquiry, indictment, and trial, shall be the same, and that the same pains and forfeitures shall follow on conviction. How can it be said, that* the previously existing common law of Scotland has not, in relation to offences which amount to treason, been by this declaration of the legislature abrogated? or that to assert this, is "to take away the principles of our common law by implication?" How can it be said, "that it is neither said nor implied, that such offences shall always be tried as treason?" Whether an offence amount to treason or not, does not depend on the denomination which the lord advocate may think fit to bestow upon it. It is not the doctrine of the law of Scotland, that the lord advocate may prosecute one crime, under the denomination appropriated to another—murder under the denomination of theft—or treason under that of murder. But that, where a crime consists of various species, or degrees of guilt and aggravation, he may indict for the lower species, or for circumstances of inferior aggravation, in order to restrict the punishment; as, having indicted for an offence capital, to which a capital punishment is affixed, he may, if he thinks proper, on the same indictment, restrict his charge to the infer-

ring an inferior punishment. He may also, where two crimes have been committed, indict for the one and not for the other, if he thinks fit, as he may in his discretion abstain from indicting altogether. But he cannot alter the nature of the offence committed, or declare that, that which constitutes one sort of crime shall be held to constitute another, or that, that which constitutes a certain crime shall be held not so to do.

The prosecutor's argument is this, That by denominating certain acts felony, he may try them as felony; that by refusing to call them treason, he may alter their nature, and dispense with the statute regarding them. Whereas the previous question is, To what offence do these facts amount? Do they constitute any high treason? If they do, it is clear they are within the statute of queen Anne, and there is no longer any room for talking of the powers of the lord advocate, or of the rules of the common law of Scotland, which, in this case, have no more application than they would have in a country removed beyond the jurisdiction of your lordships.

It is really to no purpose for the prosecutor to say, that the law of treason introduced by the act of queen Anne, is entirely statutory, and has nothing to do with the common law of England,* or to congratulate himself on the total ignorance in which he is presumed and entitled to remain on this subject. What is introduced by the act of queen Anne, is the whole law of England, whether by statute or by common law, regarding high treason, its trial, and its punishment. Whether the rule contended for arises from "a general principle of the common law of England, not peculiar to the law of treason," is not the question. Is it a principle of the law of England applicable to cases of treason? If it be, then it is a principle introduced into Scotland, in cases of treason by the act of queen Anne. But that the whole law of England as to treason is transferred to Scotland, is admitted by the prosecutor. For he states that "it is impossible to dispute, that in the legal definition of the crime of treason; in the mode and form of process by which it is to be tried; in the rules of evidence by which it is to be established; in the mode and effect of conviction and punishment; in short, in the whole process from the commencement to the termination, the law of England is transferred to Scotland. But," he adds, "at this point the transfer of the English law, and the innovation upon the Scotch law, stop short," that is, at the termination of the whole

* Inf. p. 391.

* Inf. p. 391.

process. The prisoner is precisely of this opinion, that after having determined the definition of the crime, the whole course of procedure, and the punishment, the influence of the English law stops, and leaves your lordships to define, investigate, and punish other crimes according to the rules of our ancient municipal law. Whether this can be called "stopping short," he does not presume to determine.

The prisoner, therefore, will apply himself first of all to prove, that an offence amounting on the evidence to what is here attempted to be charged, and insisted to be sufficiently charged, could not in England be tried as a felony, under this or any other act of Parliament.

The rule of the common law of England is this, "Treason drowns felony;" or, as it is otherwise expressed, "Felony merges in treason." And in general, by the rule of the common law of England, the greater offence drowns the less.

Thus, in the year-book, 31st Hen. 6th, 15, it was agreed, that if a man be indicted, arraigned, and acquitted of the robbery of J. S. he (meaning J. S.) shall not have trespass, for the trespass is extinct in the felony, *et omne majus trahit ad se minus.**

And no trespass lies for what appears to the Court to be felony. So no action of trespass lies by the husband for a battery of the wife, by which she languished for six weeks, and then died of the same blow, for this is felony. Though for the battery of the wife, by which he lost her society for a certain time, an action of trespass does lie by the husband alone,† And in *Dawkes v. Coveleigh*, Mr. Justice Jones, citing the above case of *Huggins*, says, "If the party robbed may have his election, either to indict the felon, or to have his action of trespass, this would prove very dangerous."‡ And lord chief-justice Roll§ gives the same reason for an action of trespass lying when the facts amount to a felony, namely, the danger the felon might not be tried.

In like manner, it is laid down, 3rd Hen. 7th, 18, by Hussey C. J. "There can be no accessory in treason. *The receiving a traitor cannot be only felony*, (le reserment de traitor ne poet esse tantum felony), but is treason, *et in casu ibidem.*"||

Saccombe's case, 33rd Hen. 8th, is thus reported by lord chief-justice Dyer: "A woman had poison'd her husband, which offence is made treason about the 31st Hen. 8th, (22nd Hen. 8th,); and by the general pardon granted by Parliament

in 32nd Hen. 8th, this offence was pardoned. Now the son had brought appeal of murder against the wife. The question was, Whether this appeal lies? And some thought, that because the offence is made treason, it mergeth each lesser crime, as the crime of murder, which was before at common law; and so the offence is not punishable as murder, but as treason, and so no appeal lies. But some were of a contrary opinion, &c. But the opinion of the judges was, that the appeal was not maintainable."¶ And the reporter refers to the case 3rd Hen. 7th, above stated.

And in Coke's Rep. in "the cases of pardons," 29th Eliz. it is laid down: "If murder or petit treason be made high treason, thereby the murder or petit treason is extinct, *for high treason doth drown every less offence.*"†

And it hath been held, that petit treason, which is in fact an aggravated species of murder, being the murder of a husband by his wife, or of the master or mistress by a servant, which are declared to be treasons by 25th Edw. 3rd, in like manner drowns and extinguishes the felony of murder.

It is very true, that it is questioned whether petit treason be in truth an offence of a distinct sort from murder. Lord Hale thinks not; for he says, that all petit treason comes under the name of felony. But so, of old, did high treason also.

Judge Foster also is at much pains to show, that petit treason is an offence of the same nature with murder.

Be this, however, as it may, Judge Foster's opinion is conclusive, that *by the common law of England, all felonies merge in the offence of high treason; and an act amounting in its circumstances to an act of high treason, cannot by the law of England be tried as a felony.*

"There is a case in *Dyer*"‡ says the learned Judge (the case cited above), "which hath been thought to favour the opinion, that the crime of murder is merged in *petit treason*, and that a pardon of treason discharged it, notwithstanding the exception of murder; but that case proveth nothing like it. A wife, about the 31st Hen. 8th, poisoned her husband. Then came a general pardon by which treason was pardoned, but with an exception of wilful murder. The heir brought an appeal of murder against the wife, and it was adjudged that the appeal did not lie. This case doth not prove that murder is merged in petit treason, but that *both murder and petit treason were*

* 31. Hen. 6th, 15, Broke's Ab. Trespass, 145.

† Huggins' Case, 4 Jac. 1; 2 Roll's Ab. 557.

‡ Ibid. 556. Pl. 16. § Stile's Rep. 347-8.

|| Year-Book, 8, Hen. 7th, 10; Broke's Ab. 19.

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* Dyer's Rep. 50. a.

† 6. Coke's Rep. 13. b.

‡ Dyer's Rep. 50, 25th Hen. 8th, *supra*.

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*merged and extinguished in the offence of high treason; for at that time, by virtue of the 22nd Hen. 8th, all wilful poisoning was high treason, and being so, the appeal, not being saved by the act, was barred, WHETHER THE TREASON HAD BEEN PARDONED OR NOT.**

Deeming that manslaughter, murder, and petit treason, are various species of criminal homicide, Judge Foster concludes, that if, upon an indictment for murder, the facts should turn out to be *petit treason*, he does not think it advisable to direct a verdict of acquittal, for fear it should avail the prisoner on a subsequent indictment for murder. But he by no means thinks that in such a case he ought to be convicted, for he says,† “Though I am satisfied that the law considers petit treason and murder as one offence, differing only in circumstance and degree, yet, whether it may be advisable to proceed upon an indictment for murder against a person plainly appearing to be guilty of petit treason, is a matter that deserveth great consideration, and probably determined the attorney-general to prefer a fresh bill for petit treason in Swan’s case,” (who had been first indicted of murder, and the attorney-general discovered before the trial that the deceased was his master). “For though the offences are to most purposes considered as substantially the same, yet as there is some difference between them with regard to the judgment that is to be pronounced upon a conviction, and a very material one with regard to the trial, a person indicted for petit treason being entitled to a peremptory challenge of 35, I think, if the prosecutor be apprised of the true state of the case, as he may be if he useth due diligence, he ought to adapt the indictment to the truth of the fact. But if, through mistake on the part of the prosecutor, or through the ignorance or inattention of the officer, a bill be preferred as for murder, and it shall come out in evidence that the prisoner stood in that sort of relation to the deceased which rendered the offence *petit treason*, I do not think it by any means advisable to direct the jury to give a verdict of acquittal, for a person charged with a crime of so heinous a nature ought not to have the chance given him by the court of availing himself of a plea of *autrefois acquit*. In such a case I should make no sort of difficulty of discharging the jury of that indictment, and ordering a fresh indictment for petit treason. In this method the prisoner will have the advantage of his peremptory challenges, and the public justice will not suffer.

Upon this two observations arise. *First*, That though the offences are substantially

the same, the greater advantages afforded by the law to the prisoner on the trial, in the peremptory challenge of 35 of the jury—in the requiring two witnesses—and other circumstances beyond what are allowed in trials of murder, entitle the prisoner, in Judge Foster’s opinion, to be indicted for petit treason, if his offence amount to that description, and to have the indictment dismissed, if through mistake, or ignorance, or inattention in the prosecutor, it be preferred as for murder, and it comes out in evidence that his relation to the deceased renders the offence petit treason. *Secondly*, That if petit treason were to be considered as a distinct species of offence, of another and higher description (as high treason compared with felony), an acquittal must follow, if the facts on the evidence should amount to the higher crime.

The prisoner thinks therefore, that your lordships will be satisfied from what is above stated, that there is no doubt whatever, but by the common law of England all inferior offences are merged and extinguished in the offence of high treason. The case in the 33rd Hen. 8th, in Dyer’s Reports as explained by Mr. Justice Foster, is by him declared to be law; and he states expressly, that in that case, though the crime committed was murder, yet it being also treason, *the murder merged in the treason*, and the trial, appeal, or indictment for murder, was therefore barred by the rule of law, independent of the question arising out of the subsequent pardon. Indeed, when that learned judge declares, that where, notwithstanding there be a difference in the punishment, yet there being also a difference in the mode of trial, one indicted for murder cannot properly be convicted, if on the evidence the offence turn out to be *petit treason*: although that learned judge is so clearly of opinion, the two offences are but shades of the same generic crimes that he thinks it doubtful whether the prisoner may not plead an acquittal of the murder, in bar of the second indictment; when he declares, that in such a case the judge should rather take the strong step of discharging the jury without their finding a verdict, in order that the prisoner may be tried with those advantages to which the law has entitled him; he could not but be of opinion, that where the crimes are essentially different in their nature, it is impossible to deprive a prisoner of the benefits of the mode of trial appointed for the crime he is truly accused of, under pretext of assigning to it an inferior denomination.

II. But, in the second place, if this be true generally by the principles of the common law of England, which in this matter is the law of Scotland also, in the latter country, the necessity of adhering,

* Foster, Crown Law, 325. † *ibid.* 327.

in all cases of treason, to the form of proceeding which the law has prescribed for the trial of such cases, is yet more imperative. In this country, the duty of proceeding according to a particular form and mode of trial, is imposed on your lordships by positive statute.

The act 7th queen Anne, c. 21, has not only declared, that "such crimes and offences which are high treason within England, shall be construed, adjudged, and taken to be high treason within Scotland; but it positively commands that all acts of treason shall be inquired into, and tried in Scotland in the same manner as is used in the court of King's bench, or by the justices of Oyer and Terminer in England.

Your lordships know, that in that act there is not only a permissive clause, enabling the queen and her successors to issue out commissions of Oyer and Terminer in Scotland under the great seal, to hear and determine cases of high treason; but by § 3, it is enacted, "That the justice court of Scotland shall have full power and authority, and they are hereby required to inquire by the oaths of twelve good and lawful men, of the county, shire, or stewartry where the respective Courts shall sit, of all high treason and misprision of high treason committed within the said county, &c. and thereupon to proceed, hear, and determine" (that is, they are required to proceed, hear, and determine), "the said offences of any persons who are indicted to stand before them, in such manner as the court of King's bench, or the justices of Oyer and Terminer in England, may do by the laws of England.

Here, then, is a positive enactment requiring and commanding your lordships to inquire into, hear, and determine all questions of high treason, in the same manner as the Court of King's bench does in England, and in no other. If your lordships were to hear and determine any question of this sort, by any other manner of proceeding, there cannot be a doubt that it would be a direct breach of this act of parliament; and it will hardly be contended that the question, Whether a fact committed be an act of high treason, or an inferior offence? depends on the words in which the public prosecutor may choose to charge it. This were an evident absurdity; for thus it would be in the power of the public prosecutor, at his pleasure, to dispense with the law. It is not here the question, Whether the public prosecutor shall restrict his charge, or dispense with part of the punishment? but, *Whether he shall dispense with the MODE OF TRIAL, which your lordships are commanded by statute to observe?* It is to no purpose to say, that if he takes from the prisoner the advantage conferred on him by law in the

mode of trial, he compensates this by so framing his accusation as to infer a more limited punishment. It were a sufficient answer to say, that this is contrary to law. But it can hardly be gravely asserted, that, in the present instance, any such compensation is offered, since what the prosecutor demands is nothing less than the life of the unfortunate man who now addresses you; and with what further consequences his conviction is to be attended, is equally unimportant to himself, to those in whom he is interested, and to the public. That because he waves certain consequences following conviction on an indictment of high treason, in the corruption of the blood, and the infliction of some senseless indignities on the lifeless body of the criminal, the public prosecutor shall be permitted to prosecute him to a conviction of death, from which he is entitled to believe he might escape, if not deprived of the mode of trial appointed by law, under the circumstances in which he stands, is a proposition so monstrous—so inconsistent with substantial justice—so opposite to every doctrine of any law—and so totally irreconcilable to the humane principle of British law, that the prisoner is incapable of reasoning upon it. He cannot adequately express his surprise, that it should ever have occurred to any person, as one on which it was possible for a court of justice to consent to proceed.

And that the legislature, in passing the said act of queen Anne, was aware, that from that time no act which amounted to high treason could be tried in Scotland by the usual forms of the criminal courts, appears from this, that, lest there should be any doubt respecting those crimes which had been treason before by the law of Scotland, but which by this act were declared to be so no longer, it was thought proper, by the 7th section, to enact, "That theft in landed men, murder under trust, wilful fire-raising, firing coal-heughs, and assassination, which were declared to be treason by particular statutes in Scotland, should thereafter only be judged and deemed to be capital offences," &c. "And the persons committers thereof, are to be punished and tried in the same manner as by the laws of Scotland is provided in the cases of other capital crimes, any thing in this act to the contrary notwithstanding."

III. In the *third* place, the prisoner has to submit, that there is nothing contained in the act 52nd Geo. 3rd, c. 104 on which this indictment is laid, which abrogates the general rule of law, that an act of treason cannot be tried as a felony, or repeals the said statute of queen Anne, by which your lordships are bound to inquire of, hear, and determine all acts of treason,

in such manner as the Court of King's-bench, or the justices of Oyer and Terminer may do.

The prisoner undertakes entirely to satisfy your lordships, that by no just rule of construction can this act 52nd of the King be held so to do—that it contains no words sufficient for this purpose—that it is not to be inferred, either from its general scope, or any of its enactments—that such a construction was not in the view of the legislature when it was passed—and that it would involve the most manifest absurdities.

There can be no doubt that the statutes 1st Edw. 6th, c. 12, requiring two witnesses in cases of treason, and 5th and 6th Edw. 6th, c. 11, confirming this provision, and requiring that the witnesses, if living, shall be examined in person in the open court; the 1st & 2nd Phil. & Mar. restoring in all cases of treason to the prisoner, the peremptory challenge of 35 jurymen; the statute 7th Will. 3rd, c. 3, confirming these privileges, and adding other valuable ones, such as the allowing the prisoner a copy of his indictment, the assigning him counsel, limiting the time of prosecution, and so on, are statutes for the benefit of the subject, and in favour of life. As little can it be doubted that the act 7th of queen Anne, limiting and defining cases of treason, introducing into Scotland the same mode of trial as in England, and allowing the prisoner a list of the witnesses against him, is of the same nature. Many valuable privileges belong to the subject in Scotland when accused of ordinary crimes which are not conferred by the law and practice of England; but in the case of high treason, he has, by the law of England, all the same privileges, as by the law of Scotland in ordinary crimes; a copy allowed him of his indictment, counsel to conduct his defence, and two witnesses necessary to be produced against him. And to these other valuable privileges are superadded, his indictment is not the discretion of a law-officer of the Crown, but must be found by a grand jury on their oaths; he has a peremptory challenge, without cause shewn, of 35 of his jury; and the jury to convict him must be unanimous.

Of these acts, therefore, the prisoner thinks himself entitled to say, that they are to be interpreted favourably for the subject, and strictly against him; and that it would be contrary to all the rules of law to hold, that they may be repealed by implication. Nothing less than the express will of the legislature can be sufficient for this purpose, and this will conveyed in distinct words of repeal. It might be a question, whether, if a subsequent act were passed, *which could receive*

no effect consistently with such acts continuing in force, this would of necessity repeal them in the same manner as positive and direct words to that effect. But the prisoner submits, that there can be no doubt, *where a subsequent statute may receive effect to many essential purposes*, although there be some to which it will not apply, unless by operating the repeal of former laws of the nature which has been described. In this case, according to no received rule of construction, can the subsequent statute be held to operate such repeal without express words.

The clauses of the act 52nd Geo. 3rd, c. 104, which affect the present question, are, the first, the seventh, and the last. The first clause is in these words: "That every person who shall, in any manner or form whatsoever, administer or cause to be administered, &c. any oath or engagement, purporting or intending to bind the person taking the same, to commit any treason or murder, or any felony punishable by law with death, shall, on conviction thereof by due course of law, be adjudged guilty of felony, and suffer death as a felon, without benefit of clergy." The seventh clause enacts, "That any offence committed against this act, if committed in that part of Great Britain called Scotland, shall and may be prosecuted, tried and determined, either before the Justiciary Court at Edinburgh, or in any of the Circuit Courts in that part of the United Kingdom." The clause provides and declares, "That any person who shall be tried, and acquitted or convicted of any offence against this act, shall not be liable to be indicted, prosecuted, or tried again for the same offence or fact as high treason; and that nothing in this act contained shall be construed to extend to prohibit any person guilty of any offence against this act, and who shall not be tried for the same as an offence against this act, from being tried for the same as high treason, or misprision of high treason, in such a manner as if this act had not been made."

There are here no express words repealing any of the acts above mentioned, which confer on the subject the privileges he is entitled to when accused of an offence amounting to the crime of high treason. There is not even an allusion to any of these statutes, or the insertion of the usual general words where it is intended to introduce any alteration in the law; "any law or practice to the contrary notwithstanding." If, therefore, these beneficial statutes of Edw. 6th, Phil. & Mary, William 3rd, and Anne, are to be held repealed, it is evident that they can only be so by inference and implication.

It were a waste of your lordships' time, to argue at length, that the general rules

of the common law are not to be held abrogated by implication, much less are positive statutes enacted for the benefit of the subject in favour of life and liberty. To take an instance that happens at the moment to occur, the act 19th Geo. 3rd, commonly called the comprehending act, empowered the commissioners of supply in Scotland, to examine such persons as were brought before them, and if found within the description of the act, as able-bodied, idle, and disorderly persons, &c. to deliver them over to the military officers of the king for recruiting the forces; and it was declared, "that from and after such delivery, &c. every person so raised, shall be deemed a listed soldier to all intents, &c. and shall not be liable to be taken out of his majesty's service by any process other than for some criminal matter;" and it was contended, that no civil court, therefore, could give any relief from the adjudication of the commissioners. But in the case of *Pattillo v. Sir William Maxwell*,* and in *Cooper v. Sir John Ogilvie*,† the Court of Session were of opinion, that "their powers of reviewing the sentences of the commissioners, arising from their inherent and constitutional jurisdiction, were not excluded by this statute." And, in like manner, in the case of *Guthrie v. Cowan*,‡ which was a conviction by the Justices of the Peace, under 39th Geo. 3rd, c. 66, to prevent the damaging of raw hides and skins, by which act the Justices at quarter sessions, on appeal, "are empowered finally to hear and determine the same," and still more to mark the intention of the legislature, it is enacted, that "no such judgment or conviction shall be removable by *certiorari* into any Court whatsoever." Yet the Court of Session were of opinion, that *where the privilege of appeal to the Supreme Court was not explicitly prohibited, an exclusion of its jurisdiction was not to be presumed.*

But the prisoner must revert once more to what he has already endeavoured to urge on your lordships' particular attention, that this question, How this offence is to be tried? must be decided by your lordships by the principles of the English law; for it is no other than a question, of how a matter constituting the crime of high treason is to be tried? as to which, both according to the general purport and effect, and by the particular words of the statute of Anne, your lordships are to proceed in the same manner that the Court of King's-bench in England would proceed.

If therefore the prisoner can satisfy

your lordships, that this act of the 52nd of the king cannot be held, according to the law of England, to authorise the trial of this offence otherwise than as high treason; he thinks your lordships will have no difficulty in deciding, that the same rule of construction must be adopted in this Court. It would be sufficient for this purpose to remark on the strange and anomalous situation in which the subjects of the opposite ends of the island would be placed, if your lordships were to hold this act a virtual repeal of the treason laws, *pro tanto*, while no such construction could take place in England; thus, supposing that the legislature intended to deprive the inhabitants of Scotland of benefits carefully conferred on them at the Union, while yet it left these benefits entire for the enjoyment of our more fortunate neighbours.

That it is a rule of the common law of England, that an act amounting to high treason, cannot be tried as an inferior species of offence, has been made apparent.

In the construction of statutes, it is a general rule in the law of England, that a statute ought to be "construed according to the reason and rule of the common law." This is so laid down by Lord Chief Baron Comyns,* quoting Plowden's Commentaries, an ancient book of great authority.

And in the modern case of *Eton College v. the bishop of Winchester*,† it is laid down by the Court of Common Pleas, that even private acts are subject to this rule. "Private acts of parliament," it is said, "must be construed according to the principle of the common law." A general custom as is well known, is nothing else than part of the common law. And it is said by lord Coke,‡ "there is a diversity between an act of parliament in the negative and in the affirmative; for an affirmative act does not take away a custom." And the learned editor, Mr. Hargrave, has the following note on this passage § "This rule, about affirmative statutes, is very common in the books," and he refers to Plowden's Commentaries. "In another place," he adds, "Lord Coke lays down a like rule, as to these not taking away the common law, but with more particularity; for his words are, that a statute made in the affirmative, without any negative expressed or implied, doth not take away the common law."

And lord Coke says, "It appears in our books, that in many cases the common law will control acts of parliament, and sometimes adjudge them to be ut-

* June 25, 1779.

† Aug. 10, 1780. June 22, 1781, Dec. 1788.

‡ Dec. 10, 1807.

* Comyns' Dig. v. Parliament, R. 13.

† 3 Wilson's Rep. 496.

‡ Coke, Littleton, 115, b.

§ Coke's 2nd Inst. 200.

tenly void; for when an act of parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such act to be void.”*

As in a grant to the king, a reservation by act of parliament to the donor of Services, “the common law controls it, and adjudges it void as to the services, for it is against reason that the king should do services.”—“So, if an act of parliament gives to any to hold all manner of pleas within his manor of D. yet he shall hold no Plea to which he himself is party, for *iniquum est*,” &c. And elsewhere he says, “This case is of necessity by construction excepted out of the statute.”†

And in like manner, speaking of a certain action, an action of waste, whether, under the statute of Gloucester, it may be brought against the assignee of one having a life estate as tenant by the courtesy, the words of the statute being general, that it may be brought against him that holdeth by law of England, or otherwise for term of life, lord Coke says, “Albeit the assignee of the tenant by the courtesy is within the letter of this law, yet no action of waste shall be brought against the assignee; for in construction of statutes, the reason of the common law giveth great light, AND THE JUDGES, AS MUCH AS MAY BE FOLLOW THE RULE THEREOF.”‡

The prisoner, therefore, assuming it to be sufficiently proved, that the rule of the common law in his case is as he has stated it, humbly contends, that the statute on which this indictment is laid, must be interpreted agreeably to that rule of the common law if possible. That an officer of the crown should at his pleasure, by calling an offence by one name instead of by another, deprive the subject of that mode of trial, to which, under such circumstances, the law has entitled him for his benefit, is against common right and reason, and therefore nothing less than express words can induce your lordships so to interpret an act of parliament. Nor is it possible, that the Court shall shew less anxiety to protect the rules of the common law, in cases of such inferior interest as are above stated, than in a case of life and death, where the subject is under an accusation which the law considers as calling on it to watch over his safety with peculiar jealousy.

In like manner, it is the general rule in interpreting subsequent acts of parliament, so to expound them as that they may not contradict former statutes, which they do not expressly contain words to repeal. Thus, it is laid down in Roll's Reports as a general rule, *leges posteriores priores con-*

trarias abrogant. But it is said, “This cannot be by ambiguous and general words.” And it is stated as a rule, that “when two general statutes are made, and one contradicts (apparently) the other, both if they can be, shall be so expounded that the one may not contradict the other. And a subsequent act, which CAN be reconciled with the former, shall not be a repeal of it.”*

In like manner, lord Coke lays down the rules for interpreting subsequent statutes, with reference to former ones, as follows. Having agreed to the general rule above mentioned, *leges posteriores priores contrarias abrogant*, he observes that “as to this purpose *contrarium est multiplex*. †

“1st, If one is an express and material negative, and the last is an express and material affirmative; or if the first is affirmative, and the latter negative.

“2dly, Although both are affirmative; as by the statute 33rd Henry 8th, c. 23, it is enacted; That if any person being examined before the king's counsel, or three of them, shall confess any treason, misprision, or murder, or be by them vehemently suspected, he shall be tried in any county where the king pleases, by his commission, &c. And afterwards another law was made, 1st & 2nd P. & M. 10, in these words, that all trials hereafter to be had for any treason shall be had according to the course of the common law, and not otherwise. This latter act, although the latter words had not been, had abrogated the former, because they were contrary in matter. But it doth not abrogate the statute 35th Henry 8th, c. 2, of trial of treasons beyond the seas, notwithstanding the negative words, because it was not contrary in matter, for that was not triable by the common law.

“3dly, Contrariety in respect of the form prescribed, &c. Only it must be known, that for as much as acts of Parliament are established with such gravity, wisdom, and universal consent of the whole realm, for the advancement of the commonwealth, they ought not, by any constrained construction, OUT OF THE GENERAL AND AMBIGUOUS WORDS OF A SUBSEQUENT ACT, to be abrogated, but ought to be maintained and supported with a benign and favourable construction.” And he illustrates this by a case in the 21st of Elizabeth in which it was found, that the act 16th Richard 2nd, c. 5, which enacts, that all the lands and tenements of one attainted in a premunire shall be forfeited to the king, had not repealed the statute *de Donis*, authorising the creation of estates-tail, and that the tenant in tail should notwithstanding forfeit only for his life.

Thus, lord Kenyon says, “There are

* 8 Coke's Rep. 118.

† 2 Inst. 25.

‡ Coke, 2 Inst. 301.

* 2nd Roll's Rep. 410.

† 11 Coke's Rep. 63. a.

several cases in the books to shew, that where the intention of the legislature was apparent, that the subsequent act should not have such an operation, there, even though the words of such statute, taken strictly and grammatically, would repeal a former act, the courts of law, *judging for the benefit of the subject*, have held that they ought not to receive such a construction."*

And in the interpretation of statutes more nearly connected with the subject in hand, there is an instance directly in point, to shew that it is not sufficient that the words of a subsequent statute *may amount* to a repeal of a former law, to induce the courts to hold a prior statute, enacted for the benefit of the subject, repealed. It seems to be agreed at present, that, by the common law, as it stood before the 1st of Edward 6th, one witness was sufficient in the case of treason, as well as in other capital cases. This is the opinion of sergeant Hawkins,† and more clearly that of Mr. J. Foster.‡

By 1st Edward 6th, c. 12, and 5th & 6th Edward 6th, c. 11, two witnesses are rendered necessary in all indictments or convictions for treason, petit treason, or misprision of treason; and by 1st & 2nd Philip & Mary c. 10, "it is enacted, that all trials after that statute to be had, awarded, or made for any treason, shall be had and used *only according to the due order and course of the common law*." By the general terms of this act, strictly taken, it would appear as if the acts of Edward 6th, introducing two witnesses in trials for treason, were repealed, as well as those statutes of Henry 8th, to some of which allusion has been made above, which trenched upon the rules established for the safety of the subject. But it is clearly shewn by Mr. Justice Foster, that, notwithstanding the generality of the words, the act of Philip and Mary was never so interpreted. Lord Coke§ is of this opinion. Lord Hale, though he appears sometimes to have doubted it, yet seems finally to have been of this opinion also.|| The judges, in the case of the regicides, agreed that the law requires two witnesses in the case of treason; and in lord Stafford's trial the same thing was agreed.¶ From that time to the Revolution, this has been regarded as settled law, which, till the passing of 7th William 3rd, could only be so under the said statutes of Edward 6th. The ground on which the statute of Philip and Mary received this interpre-

tation could be only this, that *the rule introduced by the acts of Edward 3rd, were in favour of the subject, and could therefore not be held to be repealed but by express words*. Without doubt, the words of the statute of Philip and Mary were sufficient, if taken in their extent, to repeal the two statutes of Edward 6th. In that instance the advantages conferred on the subject in the mode of trial for the offence, were held not to be abrogated by general words, though in strictness liable to this interpretation. So, in the present instance, the prisoner humbly contends, that the benefits conferred in the mode of trial by so many statutes, cannot be held to be abrogated by the general words of the act on which this indictment is framed; words less subject to such an interpretation than those of the act of Philip and Mary.

But further, the prisoner humbly submits it as quite clear, that without the most express words, it *can never be understood that the legislature intended to render an offence a felony, which by law is a treason*. Indeed, this must appear to every lawyer nothing short of a contradiction in terms. And it is to be observed, that it is not here the question, whether the legislature intended merely that the particular sort of treason, which might be committed by administering some sorts of treasonable oaths, *should be TRIED in the same manner as felonies are tried*, and that the subject, in this case, should be deprived of the benefits of a trial as for treason. That this is not lightly to be inferred, the prisoner has already endeavoured to show. But the demand made by the prosecutor is of a yet more extraordinary nature. He desires that your lordships should hold, that by this act the legislature have declared *a treason to be a felony*. The words of the statute are, that the person administering a certain oath, shall be adjudged guilty of felony; and the proposition of the prosecutor is, that he shall be so adjudged, although, by the act of which he is accused, he is guilty of treason. The prisoner affirms, without fear of contradiction, that if that be the meaning of the act, it stands single in the statute-book. He ventures to affirm, without fear of contradiction, that there is not a passage in any writer on the law of England, in the doctrine of any judge, or the argument of any English lawyer, of which a record has been preserved, from which it may be inferred, that the possibility of any such enactment was ever contemplated. Of the course the legislature adopts, when it proposes to dispense with the mode of trial in treason, there are modern instances; but that this is not the course for that purpose, there is abundant authority to shew.

By the 3rd Henry 7th, c. 14, it is

* 4 Term Rep. 2.

† Hawk. P. C. B. 2, c. 25, § 129.

‡ Foster 233. § Coke, 3rd Inst. 26, 27.

|| 1 Hale, 806.

¶ Kelyng's Rep. 9; 3 St. Tr. 204. [7 How. St. Tr. 1293.]

enacted, "That if any servant, admitted to be the king's servant sworn, and his name put to the chequer-roll of his household, &c. make any confederacies, compassings, conspiracies, or imaginations, with any person, or persons; to destroy or murder the king, or any lord, or other person sworn to the king's counsel, &c. the same offence be judged felony; and the misdoers to have judgment and execution, as felons standeth ought to have by the common law." *Compassing and conspiring to destroy and murder the king, &c.* without any doubt, high treason under the statute of Edward 3rd; and by the words of the statute of Henry 7th it would appear that this treason was declared a felony, which would be the more extraordinary, as it is not even deprived of the benefit of clergy. But to lord Coke, who has an express chapter upon this statute, it never occurred that this interpretation could be put upon it. He regards it as only applicable to such sort of confederacy, compassing, &c. as, being unaccompanied by the overt act required, would not amount to treason. For he says, "To destroy or murder the king. By this act it expressly appeareth, by the judgment of the whole parliament, that besides the confederacy, conspiracy, or imagination, there must be some other overt act, or deed, tending thereunto, to make it treason within the statute of 25th Edward 3rd. And, therefore, the bare confederacy, compassing, conspiracy, or imagination, by words only, is made felony by this act. But if the conspirators do provide any weapon, or other thing, to accomplish their devilish intent, this, and the like, is an overt act to make it treason."* So far from conceiving that a treason could be enacted into a felony, he holds the enacting an offence to be a felony, to be a judgment of the whole parliament, that there are circumstances under which it might be committed without being guilty of treason, although the words are expressly such as are the very definition of the highest sort of treason.

In like manner, the prisoner would say, that the act 52nd of the king, declaring that the administering of an oath, purporting to bind to commit treason, shall be a felony, is a judgment of parliament that it may be committed without being guilty of treason. But as lord Coke goes on to say, if certain circumstances accompany the confederacies mentioned in the 3rd of Henry 7th, these are overt acts to make it treason, intimating that it can no longer be tried as a felony under that statute; so, the prisoner would say, that, if the oath be administered under certain circumstances, then such administering is treason; and the offence cannot be tried under the 52nd of the king.

* Coke's 3rd Inst. 38.

To the same purpose lord Hale, observing on this statute of Henry 7th, remarks, "that it makes conspiring the king's death to be felony, which it would not have done, if the bare conspiracy without an overt act had been treason."* The same author remarks, that "the statutes 1st and 2nd Phil. and Mar. c. 3., 1st Edw. 6th. c. 12., 23rd Eliz. c. 2., making several offences felony, have this wary clause, THE SAME NOT BEING TREASON BY STATUTE 25th Edward 3rd;" and he says, "enacting an offence to be a felony is a great evidence that it was not treason before, AND A JUDGMENT OF PARLIAMENT IN POINT, FOR IT CANNOT BE THOUGHT THAT IT WOULD MAKE THAT LESS THAN TREASON WHICH WAS TREASON BY 25TH EDWARD 3rd."†

And Mr. J. Foster, in terms more explicit, says, "Lord chief-justice Hale was of opinion, that bare words are not an overt act of treason. Coke was of the same opinion. Hale has treated the subject pretty much at large, and I shall not repeat his argument, but I must say, I think his reasons founded on temporary acts, or acts since repealed, which make speaking the words therein set forth felony, or misdeemeanor, ARE UNANSWERABLE. For, if these words, seditious to the last degree, had been deemed overt acts within the statutes of treasons, THE LEGISLATURE COULD NOT, WITH ANY SORT OF CONSISTENCY, HAVE TREATED THEM AS FELONY OR MISDEMEANOR." And he adds in a note, the like use hath been made of temporary statutes, which make words in certain cases treason. But I do not build upon them. I RELY ON THOSE WHICH MAKE WORDS FELONY OR MISDEMEANOR."‡

The prisoner, therefore, takes it for granted on all the authorities, that so far is the enacting an offence to be felony which was understood to be treason, from being a declaration of the legislature, that although treason, it may be tried as felony, it is a judgment of parliament that it was not treason before; and where the legislature, in enacting an offence to be felony, has employed words which might embrace the commission of it under circumstances which would make it treason, it is an established rule of law; that such enactment applies only to cases where the offence does not amount to treason: It is, therefore, only necessary for the prisoner to show, with regard to the offence mentioned in the act, that there are cases in which its commission would not amount to treason, in order to relieve your lordships from any difficulty you might feel yourselves under, if you were bound either to decide against the weight of authority,

* 1 Hale 111. † Ibid: 260, 261. ‡ Foster, 200, 201.

that has been produced, or else to hold as nugatory the first part of this enactment of these statutes. But there is no occasion for any such difficulty.

In the first place, the words, "any treason," are necessary in the statute, in order to embrace the case of an oath to commit *petit treason*, which, your lordships know, is an aggravated species of murder, and which otherwise, in England, *would not have fallen under the words of the statute*. Whether it might, notwithstanding, have been held within its meaning, it is unnecessary to discuss. It is certain, that in all general pardons which have been passed for a century and a half, the exception of *petit treason*, *eo nomine*, has been constantly inserted with that of wilful murder; and such is now the usual wording of acts of parliament.* *Secondly*, there are not wanting cases of oaths to commit *high treason* to which it applies. Thus, an oath, or engagement to join in a conspiracy to obtain any public purpose by open force and violence, as to raise the rate of wages generally; to destroy all machinery, not merely in one particular place, or of one particular description; or to redress any public grievance; in short, to join in any of those acts of open violence and tumult, which are distinguished in law as a constructive levying of war against the king in his realm, *would be within the statute*; and the administering and taking such oath *would not amount to an overt act of treason under any existing law*. For the compassing to levy such a war as this, is, as your lordships well know, *not treason*: and the compassing or conspiring to levy any war, unless it amount to an overt act of compassing the king's death, is only treasonable under the statute of the 36th of his present majesty.

In no view could this word treason have been omitted out of the statute consistently with the main object for which it was passed, namely, the putting down certain disturbances, threatening very serious consequences. As it was obvious that all *murderous* engagements would not be included without the insertion of the word *treason*, so it was easy to see that the projected disturbances might be of a nature amounting to a constructive levying of war, and that, without the insertion of the word *treason*, a difficulty might occur, since an engagement to commit this sort of treason would not fall under the description of an engagement to commit felony. Another reason may be supposed to have had its weight, namely, that the act 36th of the king, rendering the compassing to levy war for certain purposes therein set forth in itself

an act of high treason, is only a temporary statute, which expires with the life of his present majesty, whereas this act of the 52nd of the king is perpetual.

Two things only remain. To give your lordships an example of the course which the legislature adopts, when its object really is that which the prosecutor would attribute to it in the present instance, and to show, in very few words, that no such conclusion as he would draw can be fairly inferred from the last section of the act, on which he seems mainly to rely.

At the time of the detestable attack made on his majesty in the year 1800, it was thought advisable to place direct attacks upon the king's person on a different footing from other acts of treason with regard to the mode of trial, and to assimilate them, in this respect, to the like murderous attempts on the person of a subject. That the actual murder of the king does not itself constitute treason, but can only be tried as an overt act of compassing his death, was, as your lordships know, solemnly decided in the case of those who put to death king Charles 1st.* It never occurred to any one, that it was possible to try these persons for murder. And by statute 9th Geo. 1st. c. 22., it is enacted, "that if any person wilfully and maliciously shoot at any person, he shall be adjudged guilty of felony, without benefit of clergy." But it was not thought, that by this act, *the shooting at the king could be prosecuted as such felony*, nor was it thought possible to enact the treason of attacking the king's life into a felony. Accordingly, the act 39th and 40th Geo. 3rd. c. 98. was passed, reciting in the preamble, that "whereas it is expedient, in cases of *high treason*, in *compassing and imagining the death of the king*, where the overt act alleged shall be the assassination or killing the king, or any direct attack against his life, &c. *the trial* for such offence should not be different from trials for murder, or wilful and malicious shooting;" it then enacts, "that the person shall be *indicted, arraigned, tried, and attainted* in the same manner, and according to the same course and order of trial in every respect, and upon the like evidence, as if such person or persons stood charged with murder." And so thoroughly aware was the legislature that treason could not be tried as felony, and that acts passed for the benefit of the subject could not be repealed by implication, that that act contains a special clause, enacting, "That none of the provisions contained in the several acts of the 7th year of king William 3rd, and the 7th of queen Anne respectively, touching trials in cases of treason, &c. shall extend to any indict-

ment of high treason, in compassing &c. where the overt act shall be such as aforesaid, but, upon conviction, judgment shall nevertheless be given, and execution done, as in other cases of high treason, any law, statute, or usage to the contrary notwithstanding."

It is believed, that the act of the present session, for the better preservation of the prince regent's person, is of the same tenor.

The prisoner has now to show, that the words in the last section of the act, relied on by the prosecutor to prove that an option is given of prosecuting treason as felony, not only authorise no such inference, but that such an inference would be attended with consequences the most preposterous, and the most dangerous.

It must be recollected, that this statute is, both by its title and preamble, to be considered as an extension of the act 37th of the king, which it was passed for the purpose of rendering more effectual. By this act, 37th Geo. 3rd, c. 123, "the administering or taking any oath, purporting or intending to bind the person taking the same to engage in any mutinous or seditious purposes, or to disturb the public peace, or to be of any association, society, or confederacy formed for any such purpose, or to obey the orders or commands of any committee not lawfully constituted, or of any leader or commander, or other person not having authority by law for that purpose, or not to inform or give evidence against any associate," &c. is declared felony, and punished by transportation for seven years. The last section of that act is in the same words with the last section of the act now under consideration. So that, by the same rule of construction, it must be maintained, that in passing the act 37th of the king, it was the intention of the legislature, that persons guilty of high treason might be tried for this felony, and be sentenced to transportation for seven years, and, being so tried, should be for ever quit from all question as to their treason. And if the words of that statute be attended to, and such be its construction, the offence might obviously amount to no less an act of treason than the enlisting in a regular body sworn to obey the orders of a leader or commander in open rebellion. The prisoner has already shown, that the direct and general words in the *first* section of the act on which he is indicted, will not abrogate the rule of the common law. There is, therefore, to this effect, no difference between the two statutes. If the inference is to be drawn from the *last clause*, it is equally applicable to the 37th of the king as to the latter act of the 52nd.

To engage in a mutinous or seditious purpose may include a treasonable en-

gagement; and to administer or take an oath, binding to any such engagement, may most easily be an overt act of treason. To disturb the public peace, may include treason; to become bound, or engage another, to be of any confederacy formed for such purpose, if the purpose be treasonable, which it may well be, may be an overt act of treason. To administer or take an oath to obey the commands of any body of men, not lawfully constituted, or of any leader or commander, not having authority by law, if such body or leader be engaged in any treasonable purpose, may be an overt act of treason, and in many, perhaps most of the instances, in which a leader and commander could be supposed appointed, is more likely to be an act of treason than otherwise. If to these considerations be added the last clause of the said act of the 37th of the king, declaring, "That any person, who shall be tried and acquitted, or convicted of any offence against this act, shall not be indicted, prosecuted, or tried again for the same offence or fact, as high treason, or misprision of high treason, and that nothing in this act contained shall be construed to extend to prevent any person guilty of any offence against this act, and who shall not be tried for the same as an offence against this act, from being tried for the same as high treason, or misprision of high treason, in such manner as if this act had never been made;" then the prosecutor has, according to his reasoning, complete evidence, that, "it is quite clearly the meaning of this law, to make the administering or taking an oath, purporting in terms of the statute, triable according to the ordinary course of justice (that is, as a felony), whether it be treason or not;"*—that is, that "it is quite clearly the meaning of the law," to *make high treason triable as a transportable felony*;—to give the power to every informer, perhaps an accomplice, of laying an information under this act, to the effect of obtaining the culprit to be indicted under it at the quarter-sessions, so that, although the offence should turn out to be truly an act of high treason, amounting to actual rebellion, and a conspiracy to take up arms, provided it be also an engagement to embark in any mutinous or seditious purpose, and it cannot well be otherwise, or to obey a body or leader, not having authority by law, he can only be convicted under the act, and transported for seven years.

There is, as your lordships know, in England, nothing to prevent any man from bringing another to justice for a public crime; and if it be the law, that

* Information, p. 300.

it is no objection to an indictment and trial under the statute, that the fact committed is high treason, then, on such information being given to the grand jury, they may lawfully indict one guilty of treason as for this felony; and if the treasonable matter be kept back from the knowledge of the grand jury, they have no choice but to indict him of the felony, and then, though it appear manifestly on the trial that the crime was high treason of the most dangerous nature, there is no legal remedy; but the culprit must escape with a punishment *absolutely ludicrous* when compared to the extent of his guilt. Is it not obvious, that if this were the intention of the legislature, the title of the statute has been mistaken, and that it ought to have been intitled, "an act for abolishing the pains and penalties of high treason in certain cases, and substituting the punishment of transportation for seven years in lieu thereof?" Nor under the last act, the 52nd of the king, is the conclusion much less absurd; for though the administering a treasonable oath renders the person subject to a capital punishment, the taking it is only a transportable offence; so that for an oath taken to kill the king, though a weapon were provided for the purpose, and other steps taken to accomplish it, a man might yet be only liable to transportation; and this, it is gravely supposed, was in the view of the legislature in passing this act.

We are here, in a question not wholly without ambiguity, endeavouring to ascertain the intention of the legislature in passing an act of parliament. The act creates two descriptions of felony, one without benefit of clergy, and capital, the other within benefit of clergy, and transportable. The legislature must therefore have been aware, not only that acts of high treason might be tried under the statute as a capital felony, but that acts of the same nature might be tried as a transportable felony. For the act says, any person taking an oath to commit treason, shall be transported for life, or for such term as the Court shall adjudge. And if the legislature meant, in one case, that high treason might be punished as a capital felony, it is equally clear, that it meant in the other that it might be punished as a transportable felony. And in passing the 37th of the king, it meant, that high treason should be punished by transportation for seven years only. The prisoner will not say, that it is difficult to suppose any thing more unlikely; but he affirms, that nothing can be supposed more impossible. To ascribe this intention to the legislature is an utter absurdity. He possesses no means of illustrating what appears so plain and undeniable, to which he cannot even imagine his answer, and which, if it

required additional support, is amply confirmed by the uniform doctrine of all writers of authority—Coke, Hale, Foster—who agree that it is not to be imputed to the legislature, that it ever intended, by any statute, to enact treason into felony. If the words, therefore, of this last clause, of these two statutes should remain utterly nugatory and unintelligible to the end of the world, this would not involve half the difficulty, or a tenth part of the absurdity, of imputing to the legislature an intention such as has been supposed.

Instead, therefore, of assuming such a proposition as this, the prisoner will rather endeavour to ascertain what meaning this clause can have, consistently with the plain rules of law and common sense. And in so doing, he is happy to think there is no extraordinary difficulty.

The clause consists of two parts. The prisoner will beg leave to begin with the last. It is in these terms, "That nothing in this act contained, shall be construed to extend to prohibit any person guilty of any offence against this act, and who shall not be tried for the same as an offence against this act, from being tried for the same as high treason, or misprision of high treason, in such manner as if this act had not been made."

Now, what is this but a clause of the nature of that *wary clause*, which lord Hale remarks in the statutes of Philip and Mary, Edward, and Elizabeth, making several offences felony, "*the same not being treason by statute 25th Edward 3rd?*" The legislature was aware, that the enacting these offences into felony was a judgment of parliament that they were not treason; and therefore to avoid the risk of any such interpretation, where the offences were treason, this clause was introduced.

In the same manner, the 52nd of the king declares, that nothing therein contained shall be construed to prohibit any offence against this act from being tried as high treason; lest it should be argued, that the general terms of the statute were a declaration of parliament, that such offence was no longer to be considered a treason, but a felony. The general terms of the enacting clause, that the administering or taking any oath binding to commit any treason, shall be deemed felony, would take in all the cases of administering or taking such oaths, though such administering or taking should amount to treason. It is true, that according to just rules of construction, and agreeably to the precedents and principles which have been mentioned, it ought not to be so construed. But it was justly thought proper not to leave this to construction, but to declare, by this express clause, that it was not intended that the statute should apply to cases where the offence actually amounted

to high treason, but that these should be tried in the same manner as before. And, as Judge Foster very justly remarks, "though it is a good general rule, *that the parliament doth nothing in vain*, yet this is very well known not to be universally true. For many valuable purposes, which wisdom, and a just concern for the public welfare, will suggest, may be answered by an express provision, not in itself of absolute indispensable necessity; sometimes for removing doubts, where different opinions have been entertained, and at other times out of abundant caution, for obviating doubts which possibly may arise."*

But the words, "who shall not be tried for the same as an offence against this act," are supposed to allude to this alternative power, which the act must therefore be held to have created. This alludes to, and is connected with, the former part of the clause, and will be best understood by examining what the meaning of this former part is.

It is in these words: "Provided also, and it is hereby declared, that any person who shall be tried and acquitted, or convicted of any offence against this act, shall not be liable to be indicted, prosecuted, or tried again for the same offence or fact as high treason, or misprision of high treason."

The prisoner readily admits, that to persons not accustomed to questions of legal construction, it may at first sight appear as if the legislature had contemplated the possibility of trying the same offence either as high treason or felony, at the pleasure of the prosecutor, or the indictors, viz. the grand jury. But it is quite obvious, that without any supposition of this sort, it must have been foreseen, that cases might readily occur where the facts might approach very close to treason, and where it might be doubtful whether to proceed for treason, or for the felony under the statute. If the latter course were adopted, and it came out in evidence to be treason, the prisoner, though acquitted, was yet subject, according to the law of England, to be tried over again for the same fact, under the denomination of the higher crime. It was this hardship the legislature meant to prevent. It meant to extend to the subject in England by statute in this case, the benefit to which he is entitled in Scotland by the common law in all cases, that he shall not be tried on different accusations, and under different denominations of guilt, more than once for the same fact. There is nothing either so anomalous, or so extraordinary, in a provision by the legislature to remedy this

hardship, when it was creating new offences, to be punished by the latter statute with great severity, that we should rather have recourse to the extravagant supposition suggested by the prosecutor, to account for the insertion of these words.

But it may be said that this reasoning relates only to a case of *acquittal*; and it may be asked, To what purpose is it declared, that a person convicted of an offence against this act, shall not be tried again for the same offence or fact as high treason, if, the fact amounting to high treason, he could not be legally convicted of that offence or fact under this act? The solution of this difficulty, if it be one, is not very intricate. In the first place; The prisoner is not aware that the legislature has ever declared, that where an acquittal on one indictment shall be a bar to another, a conviction shall not be equally so; and it would seem a singular hardship if it were otherwise. In the second place, It was obvious, that circumstances might come out afterwards, shewing the facts committed to have amounted to treason, which might not appear at the trial. And the legislature thought it would be too rigorous a proceeding, on account of after discoveries, which, though they might vary its legal complexion, might not vary the facts of the case, again to put the offender on his trial, which might be by the common law. For a conviction or acquittal on a charge of felony could not be pleaded in bar of a charge of high treason by the common law.

In the third place, An offence not amounting to treason when committed or tried, may become treason by a subsequent event, and the possibility of this, was more obvious in those offences which were in the particular view of the legislature in passing these acts. The species of treason to which the engagements contemplated were the most likely to lead, was evidently the levying of war. Now, if the war proposed to be levied, were not directly against the king's person or government, or coming under the 36th of the king, but only what is termed a constructive levying of war against the king, then the bare conspiracy would be no treason, unless the rising were effected, or the war levied. But "in that case, the conspirators, as well as the actors, will be all equally guilty; for in high treasons of all kinds, the *participes criminis* are principals." "And if divers conspire to levy war, and some of them actually levy it, this is high treason in all the conspirators; because in treason all are principals, and here is a war levied."

* Foster, c. 20, § 224.

* Foster, 212.

So it was declared at the arraignment of sir Nicholas Throgmorton, by the opinions of the judges, that if two or more conspire to commit treason, as in levying war, and any of them afterwards put it in execution, that is treason in all, and this by the common law before the declaration was made in 25th Edw. 3rd.* Thus, if one were indicted under the 37th of the king, for administering or taking an oath, binding to be of an association for any mutinous or seditious purpose, or to obey the orders or commands of any committee or body of men not lawfully constituted, or of any leader or commander not having authority by law, there being at the time of his arraignment no war levied, he could not be tried for treason. But being either acquitted or convicted under this indictment, if afterwards the association or committee, or body of men, or leader, or commander with whom he had so conspired, should actually proceed to effect the rising contemplated, such rising amounting to a levying of war, he would be thereby rendered *ex post facto* guilty of treason; and but for this clause in the act, might be tried for treason accordingly; nor could he plead in bar, his former acquittal or conviction of the felony.

These considerations rendered this clause indispensable. So to interpret the intention of the legislature infers no absurdity, but, on the contrary, is for the advancement of justice, and for the freedom of the subject from vexatious and oppressive prosecutions. The only inconvenience that can be supposed to arise from it is this, that if an offender be tried under either of these acts, and it come out on evidence that his offence amounts to high treason, he must be acquitted under the general rule of law, that treason cannot be tried as felony. But this by no means follows; for if it be the intention of the legislature that treason shall not be tried as a felony under this act, he cannot be lawfully put upon his trial for this felony, if his offence amounts to treason. If the facts so appear to the magistrate, he ought to be committed for treason, and not for felony. If they so appear to the grand jury, he cannot be lawfully indicted for the felony, and the judge will not suffer him to be put on his trial on such indictment. If it so appear to your lordships, you will not pronounce an interlocutor of relevancy. If in England, "through mistake on the part of the prosecutor, or through the ignorance or inattention of the officer, a bill were preferred as for this felony, and it should come out on evidence that the offence was high treason, the judge would not

think it by any means advisable to direct the jury to give a verdict of acquittal: for a person charged with a crime of so heinous a nature, ought not to have the chance given him by the Court, of availing himself of a plea of *autrefois acquit*."—"In such a case," in the words of Mr. Justice Foster, "he would make no sort of difficulty of discharging the jury of that indictment, and ordering a fresh indictment for the treason. In this method, the prisoner would have the advantage of his peremptory challenges, and the public justice would not suffer."†

That the Court has authority, agreeably to the law and practice in England, to discharge the jury after the prisoner has pleaded, and evidence given, where the purposes of justice require it, has, from before the time of Lord Hale been admitted by the best authorities.‡

The case of a trial on this statute, where the offence amounts to high treason, is precisely in point with that put in by Mr. Justice Foster, of a trial for murder where the offence amounts to petit treason. For in that case it is laid down by all the authorities, that an acquittal upon an indictment of murder, is a good bar to an indictment of petit treason in the same way as an acquittal of this felony created by the statutes of the king, would be a good plea in bar of an indictment of high treason for the same offence, though neither in the case of petit treason, even in Judge Foster's opinion, ought a conviction to follow, nor by the general rule of law, in an indictment under this statute, as the prisoner trusts he has shown, can a conviction follow, if the offence amount to high treason.‡

According to the construction which the prosecutor would put on the intention of the legislature in passing the statute on which he has laid the present indictment, he would impute to the legislature this inconceivable injustice and absurdity—That on the one hand the highest and most dangerous species of treason, involving a meditated attack on the life of the sovereign, sanctioned by the solemnity of oaths, and extending, as is alleged in this case, to a conspiracy of hundreds or thousands of persons, threatening, as is here also alleged, "to effect the subversion of the established government, laws, and constitution of this kingdom," by means which must involve the whole nation in bloodshed and in open

* Foster, Crown Law, 328.

† 1 Hale 35, 522, 557. 2 Hale, 296. Kelyng's Rep. 26, 47, 52.

‡ Foster, 38, 39. Foster's C. L. pp. 30, et seq. Ib. 328. Leach's case in C. L. Case 233. Ibid. Ca. 257. Foster, 329. 2 Hale, 246, 252. 3 Coke Inst. 213.

* 1 Hale, 123.

war, that he tried as a felony, punishable only with transportation; and the indictment being once preferred, whether by a grand jury in England, or the public prosecutors in Scotland, no remedy remains, but the offenders must be for ever discharged by this means from all further consequences of their guilt. And on the other hand, by the contrivance of the officers of the Crown, the subjects of this country may be brought to trial, and placed in hazard of their lives on a state prosecution—with the whole weight and influence of government to oppress them—the over-heated zeal of its officers excited, perhaps their interest and reputation at stake on the issue—as well as the passions of the factions, the terrors of the timid, the just indignation of the well-affected against crimes involving the common safety, overpowering the natural disposition to clemency and deliberation,—all combining to deprive the accused of the security which in ordinary cases they possess, for a fair and impartial trial;—while they are at the same time stripped of those safeguards, which it has been the ceaseless endeavour of the law of England, from the most ancient times, even in the midst of tyranny and disorder, to provide for the protection of the subject against that oppression, and that danger, to which it has always felt and acknowledged him to be in these circumstances exposed. The prisoner will only add, that to put such a construction upon these acts of parliament, would not be to expound the laws, but to libel those who made them. At your lordships' hands, he is certain there is no danger of their receiving such a construction, equally disposed as you feel, at once to protect the subject from oppression, and to vindicate the necessary justice of the country.

In respect whereof, &c.

J. P. Grant.

COURT OF JUSTICIARY.

JULY 18, 1817.

Present.

Rt. Hon. David Boyle, Lord Justice Clerk.
Lord Hermand.
Lord Gillies.
Lord Pitmilley.
Lord Reston.

Counsel for the Crown.

Rt. Hon. Alexander Macneil of Meadowbank, His Majesty's Advocate (afterwards a Lord of Session and Justiciary, with the title of Lord Meadowbank.)
Messrs. Wedderburn, Esq. Solicitor-General.
H. Home Drummond, Esq. Advocate-Depute.

Counsel for the Panel.

John Clerk, Esq.
Gen. Cranston, Esq.
Thos. Thomson, Esq.
Francis Jeffrey, Esq.
J. P. Grant, Esq.
J. A. Murray, Esq.
James Moncrieff, Esq.
Henry Cockburn, Esq.

[The Panel was placed at the bar.]

Lord Justice Clerk.—Your lordships will recollect, that, at a former diet, objections were stated at great length to the relevancy of the indictment against the panel, which objections were considered by you so important, that you ordered them to be embodied in informations. The informations are now before you, and your lordships will now give your opinions upon them.

Mr. Clerk.—I attend your lordships for the panel, and, I trust I may be permitted to say a few words upon the indictment in addition to what is stated in the informations; and I shall not detain you long.

Lord Advocate.—The gentlemen have given in two informations when the order was for one; and your lordships will judge whether we are now to go into a new pleading.

Mr. Clerk.—You know, that before the indictment was ready, it was concerted there should be informations. That appointment was renewed after the indictment was prepared and after hearing counsel; but it was before the last indictment was prepared that it was fixed there should be informations; and your lordships have not yet given any opinion at all upon this indictment.—The informations were ordered upon the understanding, that the indictment would be nearly the same as the former one, only correcting the slovenly statement of the former. It would be strange if your lordships were not to hear counsel. I shall not detain you long, but shall only call your attention to some passages that had escaped the acuteness of my learned friend Mr. Moncrieff.

As to the other argument, by Mr. Grant, I do not mean to touch upon it at all.

Lord Justice Clerk.—It is necessary to attend to the shape in which the case comes before us. Mr. Clerk in his statement is correct in point of fact; but I distinctly intimated, when a new indictment was served on the panel, that no new additional arguments would be looked for by the Court from the bar, but that the counsel for the prisoner should embody their whole arguments in the informations—when we would consider them and give our opinions. I considered it fixed, that no further and new discussions were to take place in this case. There was a discussion as to the time to be given for preparing the informations, and we listened to the attorney for further time

to the gentleman who was to draw the information for the panel. Mr. Cockburn was the counsel who made an application on the subject. We gave to the panel's counsel the fullest and most ample opportunity for preparation; and not only is there an able argument for the panel by Mr. Moncrieff, but one also by Mr. Grant. I have fully considered the informations, and I presume your lordships are all prepared to give your opinions upon them.

Lord Hermand.—I am of the same opinion with your lordship, and I beg leave to make an addition to your statement; that in this case the information for the Crown was drawn first. It was put into the hands of the ablest hand of counsel that could appear for any panel, and I do not see for what reason we should reverse the usual course of proceeding, and again take a day or two to consider what Mr. Clerk or others may bring forward.

Lord Gillies.—Any thing additional should have been stated at an earlier period.

Lord Pitmilley was of the same opinion.

Lord Hermand.—This case has been truly stated to be a case of great importance. It is of the last importance to the panel at the bar, for it is a question of capital punishment; which, whatever may be done in another quarter, we have no power to mitigate. But it is of greater consequence in another view: it is of infinite consequence to every one who now hears me, every one who has a due regard for the excellent constitution under which we have the happiness to live.

The question, however, is extremely simple in itself; and I cannot say I am much afraid of the hint of impeachment thrown out,* if we refuse to give effect to what is called a judgment of Parliament in the days of a former Sovereign. I sit here, in the reign of George the third, to give my opinion how far an indictment is well laid, upon the stat. 52nd. Geo. 3rd. cap. 104, an act called for by the circumstances of the times; and to which, every man having a due sense of the constitution, should wish to give fair and full effect.

It is upon that statute, therefore, I have formed my opinion; and to it I beg leave to call the attention of the Court. It enacts, "That every person who shall, in any manner or form whatsoever, administer, or cause to be administered, or be aiding or assisting at the administering, of any oath or engagement, purporting or intending to bind the person taking the same to commit any treason or murder, or any felony punishable by law with death, shall, on conviction thereof by due course of law, be adjudged guilty of felony, and suffer death as a felon, without benefit of clergy." Yet in the face of this clear enactment we are gravely told, that, by some rule, of the submersion of one crime into another, said to be found in English law books, of

which I pretend to know little, it is not in our power, without violating our duty, to pronounce judgment in this case as in a felony, though we are commanded to do so by a solemn act of the legislature. The term *felony* occurs in almost every clause of the statute, particularly that which I have just now read. And the minor proposition, duly following out the words of the statute, states that, "You the said Andrew M'Kinley are guilty of the said crimes, or of one or more of them, actor, or art and part: in so far as you the said Andrew M'Kinley did, at secret meetings, and on other occasions, at Glasgow, and in the vicinity thereof, in the course of the months of November and December 1816, and January and February 1817, wickedly, maliciously, and feloniously administer, or cause to be administered, or did aid or assist at the administering, to a great number of persons, to the amount of several hundreds, an oath or engagement, or an engagement or obligation in the nature of an oath, purporting or intending to bind the persons taking the same to commit treason, by obtaining annual parliaments and universal suffrage by physical strength or force, and thereby effecting the subversion of the established government, laws, and constitution of this kingdom, by unlawful and violent means." It is inconceivable to me, that a statement more in terms of the act of parliament could be made.

After reciting the oath, the indictment charges the administering it, at various secret meetings, to sundry persons, many of them secured, and some of whom have absconded. The material question therefore turns upon the oath, which is here recited:

"In awful presence of God, I, A. B. do voluntarily swear, that I will persevere in my endeavouring to form a brotherhood of affection amongst Britons of every description, who are considered worthy of confidence; and that I will persevere in my endeavours to obtain for all the people in Great Britain and Ireland, not disqualified by crimes or insanity, the elective franchise, at the age of twenty-one, with free and equal representation, and annual parliaments, and that I will support the same to the utmost of my power, either by moral or physical strength (or force), as the case may require: And I do further swear, that neither hopes, fears, rewards or punishments, shall induce me to inform on, or give evidence against any member or members, collectively or individually, for any act or expression done, or made in, or out, in this or similar societies, under the punishment of death, to be inflicted on me by any member or members of such societies; so help me God, and keep me steadfast."

I think this is the blackest oath I ever read. I think it bears treason and blasphemy on the face of it. It shocks me to see the name of God used for such purposes. With that name this strange oath begins and ends.

* 2nd Inf. p. 455.

Is it, however, an oath under the statute? And with every respect for the ability displayed in contesting it, I have no doubt that it is; for it did purport, or intend to bind the persons taking it, to commit treason, murder, or other felony punishable with death. A brotherhood was to be formed of persons worthy of confidence, a secret brotherhood, for purposes subversive of the constitution. What more so than universal suffrage, or annual elections to parliament? I take the words of my learned friends on this subject. One gentleman said the plan was productive of anarchy or despotism. I took down this from Mr. Cranston. Mr. Clerk said the oath was wicked enough, indicating a very bad intention. I find the very same proposition stated by Mr. Moncrieff. I agree with them in this; and it amuses me to see that the gentleman who drew the one information, does not say a word upon the other. On the contrary, Mr. Clerk, who stood up a little ago, said he would take no notice of it whatever. Nay, in the information to which I referred, there is a passage which I do not understand, and which I shall therefore read, that it may be explained in conformity to the panel's argument, if it admit of such explanation. "It may be admitted, that without reference to some other objects, this oath was in a high degree improper, that it was highly criminal; that it was of an extremely dangerous tendency; that it was the duty of the public prosecutor to take notice of it, if the facts were true; and that it might with the utmost propriety have been made the subject of an indictment. Supposing all this, the question remains, whether it is an oath binding the party to commit a treason? Nothing, therefore, can be more irrelevant or inconclusive, than to state circumstances in the oath which indicate its proper or criminal views. They may be very relevant to shew such intentions; but what your lordships are bound to determine is, whether the oath purports to bind the party to commit treason?"*

It appears to me, that, with the utmost propriety, the oath has been made the subject of indictment; and I cannot characterise it more strongly than is done in this passage. Nay, more, "The prosecutor may state, and those who argue the case of the informant will agree with him, that nothing more unconstitutional, nothing more absurd, nothing more mischievous, nothing more necessarily leading to despotism, and to the destruction of the liberties of the country, could be suggested, than this proposal of universal suffrage and annual parliaments."† Better language than I could have used; but it expresses the very feeling of my heart, and the sentiments of every one who has ever turned his attention to such a subject as that unfortunately now before the Court.

We were told that lawful means might be

employed to accomplish all these objects. There is a good deal of inconsistency in this; and, in a question of relevancy, such lawful means are not to be implied. They are not to be implied in trying the relevancy of this indictment, though they may be the subject of after-proof.

The question recurs, If there be treason in all this? or rather does the oath purport, or intend to bind to the commission of treason, murder, or other felony punishable with death? Now, laying aside the other crimes specified, if the measure contemplated be subversive of the constitution, it is treason against the state. And though the king's name be employed by lawyers, as compassing the king's death, levying war against the king, it is as the representative of the state, the preservation of which is the great object.

This is well explained, in a passage from one of the first lawyers and judges that England ever saw, quoted in the information for the crown.

"In every insurrection, which, in judgment of law, is intended against the person of the king, be it to dethrone or imprison him, or to oblige him to alter his measures of government, or to remove evil counsellors from about him, these risings all amount to levying war within the statute, whether attended with the pomp and circumstances of open war or not. And any conspiracy to levy war for these purposes, though not treason within the clause of levying war, is yet an overt act within the other clause of compassing the king's death. For these purposes cannot be effected by numbers and open force, without manifest danger to his person."*

And, in another passage, "Insurrections likewise for redressing national grievances, or for the expulsion of foreigners in general, or indeed any single nation, living here under the protection of the king, or for the reformation of real or imaginary evils of a public nature, and in which the insurgents have no special interest; risings to effect these ends, by force and numbers, are, by construction of law, within the clause of levying war, for they are levelled at the king's crown and royal dignity." That is, I conceive, the law upon this subject; and, though I speak with the highest respect of the great man (Hale), in one part of whose works there is a passage from which this learned judge (Foster) differs, the quotations which I have read express the true law of the case, so far as I can presume to understand it. Indeed, so unanswerable is this, that the counsel for the panel admits it, and adduces the authority of sir Matthew Hale in these words:

"It is obvious that no other treason can be meant than that of levying war against the king. It may involve the compassing and imagining the death of the king, because the levying of war against the king may well be

* 1st Inf. p. 446. † 1st Inf. p. 447.

* 1st Inf. p. 381.

an overt act of such compassing and imagining. For your lordships know that it is laid down by lord Hale (1 Hale, 122), that 'an assembly to levy war against the king, either to depose; or restrain, or enforce him to any act, or to come to his presence to remove his counsellors or ministers, or to fight against the king's lieutenant, or military commissionate officers, is an overt act, proving the compassing the death of the king; for such a war is directed against the very person of the king, and he that designs to fight against the king, cannot but know that at least it must hazard his life.' And in sir John Friend's case,* who was convicted of high treason in compassing and conspiring the death of the king, lord chief-justice Holt lays down the law, that, 'If there be only a conspiracy to levy war, it is not treason; but if the design and conspiracy be either to kill the king, or depose him, or imprison him, or put any force or restraint upon him, and the way and method of effecting of these is by levying a war, then the consultation and conspiracy to levy a war for that purpose is high treason, though no war be levied; for such consultation and conspiracy is an overt act, proving the compassing the death of the king.'†

In the other information for the panel, we are told, that the kind of treason is not specified in the indictment; but here, another of his learned counsel, tells us that it is specified. He says, it can be nothing else than levying war against the king. And, in another passage still more favourable to the indictment, "But to effect this subversion by unlawful and violent means, through the obtaining annual parliaments and universal suffrage by physical force or strength, if they are words sufficiently certain and precise to amount to a legal allegation of any sort of treason, can mean nothing else than a levying of war, in order, by force and constraint, to compel the king to change his measures or counsels, or, at any rate, in order to put force or constraint upon both houses or either House of Parliament."‡ The word *subversion* was quarrelled with; but it is cured here, "since annual parliaments and universal suffrage cannot be obtained but by an act passed by the two houses and by the king, and if this passing be obtained by violent means, which violence amounts to treasonable violence, it can be no other than the putting such force or constraint either upon his majesty, or upon one or other house of parliament, as is above mentioned."

When I read this, I looked to the title of the paper. I took it to have come from the counsel for the crown—for I cannot conceive a stronger argument they could have urged. Figure then the effect of this universal suffrage and these annual parliaments, i. e. annual elections, not annual Sessions of parliament. The life of the king, of every other good man, and, among

them, I regret to say it, the lives of the panel's zealous defenders, would be in the situation of republican France. The lantern and the guillotine would be the order of the day; and my learned friends would probably go the first. Every revolution begins with the lowest of the people; and experience shows, that those whom they deemed their friends are the first to be sacrificed. It is absurd, therefore, to suppose, that legal means can be used for such deplorable ends. Bad intention is inherent in the oath, constituting a formed plan to subvert the constitution, which only would want an overt act to convert it into treason.

In the present deliberation, it is essential to remark, that there is no charge of treason in the indictment, a circumstance which cuts up the panel's argument by the root. The charge is *not* a charge of treason. The indictment mentions treason indeed, but it does not say that treason has been committed. It has *not* been committed; and, under the providence of God, may never be. Yet we are told that the indictment is irrelevant, because it does not mention what species of treason the parties to the oath had in their minds. The charge is of quite a different nature. It is, that the panel administered an oath, purporting to bind to the commission of treason. By what means was that object to be attained? The oath removes every doubt, "That I will support the same to the utmost of my power, either by moral or physical strength, as the case may require,"—in the judgment, no doubt, of the brotherhood supposed to have been already established.

These words require no commentary. Moral strength consists in argument: physical strength is strength of arms; and these are to be employed as the case may require—the necessity being to be determined by the framers of the oath, and the brotherhood which it mentions. All this is under the dreadful sanction, "And I do further swear, that neither hopes, fears, rewards, or punishments, shall induce me to inform on, or give evidence against, any member or members, collectively or individually, for any act or expression done or made, in or out, in this or similar societies, under the punishment of death, to be inflicted on me by any member or members of such societies, *So help me God, and keep me steadfast.*" I think that the indictment need not have been confined to the charge of an oath binding to commit treason. It might have been also stated that this was an engagement binding to commit murder.

From the first I thought this a simple case; and, after all I have heard and read upon the subject, I still consider it in that light. It may not be improper, however, to say a few words upon the arguments of the panel in his two informations.

It is said, and seems to be the great argument in the first, that this indictment is vague, as not specifying any particular treason; and we have a long quotation from Mr. Hume, to

* 4. State Trials, 625, 626; [13 How. St. Tr. 61.] +, 2nd Inf. p. 457. † Ibid.

show, what was never disputed, that specification is necessary in every criminal charge. But that is nothing to the present question. The charge is not a charge of treason but of administering an oath which purports to bind to commit treason. It is not libelled that treason was committed; and it is impossible that the species of what never existed could be stated in the indictment. The oath itself is sufficiently special, bearing an obligation to bring about universal suffrage and annual parliaments, either by moral or physical strength, as the case may require.

Reference is made to the case of Kendal.* In that case sir James Montgomery stood committed on a charge of treason; and it was therefore, by mere inaccuracy, that the public prosecutor did not specify what he knew; he had only to look at the bill found by the grand jury to see the species of treason charged.

It is said, that to specify the purport of the oath is not sufficient. It might not be sufficient in the case of incendiary letters and other instances, but here the objection is in the face of the act of parliament, which enacts, that it shall be sufficient to set forth the purport of such oath or engagement, or some material part thereof.

A question was put, What is the antecedent to the words, "the same" in this oath? It is neither elegant, nor classical, nor correct; but the antecedent may be *endeavours* or it may be annual parliaments and universal suffrage; in either view, though clumsily expressed, the meaning is sufficiently clear.

The case was figured, that the oath had been, "to the utmost of my power," without addition: which words imply every power. Here, however, there would be room for construction, and that which was favourable for the panel might have been adopted. In the present case, the oath is too clear to admit it. But, it is obvious, that they were to employ every sort of force. Where there is a possibility of a favourable construction for the panel, it ever will receive effect from me; but the words of the oath exclude that construction. I see a clear obligation to employ physical strength to bring about these detestable ends.

The supplementary information contains a new idea contradictory to the statement in the first. "The prisoner has next to submit to the Court a view of the question, totally different from those he has already offered, and, in arguing which, he is to proceed on the assumption, that those views which he has already stated are erroneous. For the purpose of this argument he is to assume, that the oath does, in its terms, necessarily, and by due construction, purport and intend to bind the persons taking the same to commit treason; and that the specific treason, to the commission of which it did purport and intend to bind, is sufficiently set forth in this indictment." I

cordially agree with the proposition "That the oath does in its terms necessarily, and by due construction, purport and intend to bind the persons taking the same to commit treason; and that the specific treason, to the commission of which it did purport and intend to bind, is sufficiently set forth in this indictment." But what I desiderate is, how any thing favourable to the unhappy man at the bar can be elicited from this contradiction of his former argument. Both propositions cannot be true, but both may be false.

The first information states the indictment as faulty, as not charging the oath as binding to any particular treason, or to any treason at all. To this I have already alluded. The second information admits, that the oath does purport and intend to bind to the commission of treason; and the argument is, that because it binds to commit treason, it cannot be tried as a felony, though the act expressly makes it triable as such.

Here it is necessary to attend to the difference between the law of England, so far as I understand it, and the law of Scotland; and in the former there may be reason why felony should merge in treason. For 1. Crimes are there, in general, tried at the instance of private prosecutors, who, from corruption or from lenity, may be induced to screen the greater, by bringing the trial for the lesser offence. 2. Even after going to a jury, a new trial is competent in England.

The law of Scotland differs in both these important particulars. 1. Trials here proceed at the instance of a public prosecutor, placed far above the influence of such a motive. 2. After going to a jury, the panel cannot be subjected to a second trial.

But it is unnecessary to go into this deduction. The act of parliament is the rule; and upon an oath binding to commit treason, or purporting to bind to commit treason, it inflicts the punishment of felony. And the following clause is highly material in the argument: "Provided also, and it is hereby declared, That any person who shall be tried and acquitted, or convicted of any offence against this act, shall not be liable to be indicted, prosecuted, or tried again for the same offence or fact, as high treason or misprision of high treason; and that nothing in this act contained, shall be construed to extend to prohibit any person guilty of any offence against this act, and who shall not be tried for the same as an offence against this act, from being tried for the same as high treason, or misprision of high treason, in such manner as if this act had not been made." This necessarily implies, that the same act may be treason or felony, and tried under either denomination. And in case of acquittal on a trial under this act, no trial for treason can afterwards take place: And if there be no trial under this act, then trial for treason may proceed.

On this point the counsel for the panel was much at a loss. "We are here, in a question

* 12 How. St. Tr. 1253.

not wholly without ambiguity, endeavouring to ascertain the intention of the legislature in passing an act of parliament. The act creates two descriptions of felony; one without benefit of clergy, and capital; the other within benefit of clergy, and transportable. The legislature must, therefore, have been aware, not only that acts of high treason might be tried under the statute as a *capital felony*, but that acts of the same nature might be tried as a transportable felony."*

And in another passage, "The prisoner readily admits, that to persons not accustomed to questions of legal construction, it may at first sight appear, as if the legislature had contemplated the possibility of trying the same offence, either as high treason or felony, at the pleasure of the prosecutor or the indictors, viz. the grand jury."† Of that possibility we have only to read the act of parliament to have an absolute certainty.

It is not however upon critical niceties, but upon the plain common sense construction of the acts of the legislature, that judges are entitled and bound to proceed. Indeed, much of the argument, however proper in the House of Commons, though even of that doubts may be entertained, comes in an irregular shape before this Court, who must apply the statute that has actually passed, without entering into speculations as to the propriety of the enactment itself. At the same time, I feel it incumbent upon me to declare, that in my apprehension, called for by the situation of the times, consummate wisdom and enlightened humanity are the genuine characteristics of the statute.

Having said so much, I cannot conclude better than in the words of a great and excellent man: "In favour of life, great strictnesses have been in all times required in points of indictments; and the truth is, that it is grown to be a blemish and inconveniency in the law and the administration thereof. More offenders escape by the over easy ear given to exceptions in indictments, than by their own innocence; and many times gross murders, burglaries, robberies, and other heinous and crying offences, escape by these unseemly niceties, to the reproach of the law, to the shame of the government, and to the encouragement of villainy, and to the dishonour of God. And it were very fit that, by some law, this overgrown curiosity and nicety were reformed, which is now become the disease of the law; and will, I fear, in time grow mortal, without some timely remedy." The editor adds, in a note: "This advice of our author would, if complied with, be of excellent use: for it would not only prevent the guilty from escaping, but would likewise be a guard to innocence; for thereby would be removed the only pretence upon which counsel is denied the prisoner in cases of felony; for if no exceptions were to be allowed but what went to the merits, there

would then be no reason to deny that assistance in cases where life is concerned, which yet is allowed in every petit trespass."*

Lord Gillies.—I wish I could agree with the learned judge in thinking this a very easy and simple case. It has cost me much time and reflection to make up my mind upon it.

The debate opens four important questions, each of considerable difficulty. I shall state them in what appears to me to be their natural order. It is a little different from that which has been adopted by the learned counsel for the panel, in the very able paper which has been drawn by Mr. Moncreiff. But this is of no consequence. I shall, in the course of delivering my opinion, take notice of each of the points which he has brought under our consideration.

1. The first question in the order in which I propose to consider them is, whether the oath, as set forth in the indictment, is of the description alleged? Does it purport or intend to bind to commit any treason, or murder, or any capital felony?

2. The second question is this, if it shall appear that the oath is, or may be of the description alleged, is it incumbent on the prosecutor to specify or describe in his indictment the crime, to the commission of which he states that the oath imports an obligation?

3. The third question is, whether the prosecutor was bound or not to specify the crime, has he in this indictment specified or described it? And, if so, is his specification or description of it accurate and correct, and such as your lordships can sustain as a proper definition of a capital felony, or of a treason?

4. The fourth and last question to which I propose to speak is, does the offence disclosed in this indictment, as explained by the prosecutor, amount to a case of treason? and, if so, can it, or ought it to be tried as a felony? This last is the question treated in the supplementary information for the prisoner.

I shall speak to these questions in the order in which I have stated them. But first of all, I wish to call the attention of your lordships to the terms of the indictment itself, and to those rules and principles by which it appears to me that we must be guided in judging of its relevancy.

I need not tell your lordships, that in all criminal cases, the crime which the prosecutor means to charge must be distinctly stated in the major proposition of the indictment; and in this, as in every other indictment, we must look, and have only to look at the major proposition in order to discover what the crime is of which the prisoner is accused. That crime, whatever it may be, statutory or not, *malum prohibitum*, or *malum in se*, so set forth in the major proposition of the indictment, is the crime charged, and that crime alone, and no other, can be proved by the public prosecutor.

Now, in the major proposition of this in-

* 2nd Inf. p. 485.

† p. 487.

* 2 Hale's P. C. 198.

dictment, what is the crime set forth? The crime there set forth, so far as regards any acts done by the prisoner, is merely that of administering an oath. There is no other fact charged against him. The single solitary act charged is that of administering an oath of a certain description, viz. an oath "purporting or intending to bind the person taking the same to commit any treason, or murder, or any felony punishable by law with death."

The mere act of administering this oath, is the crime charged. And for the trial of this charge there are just two points which this indictment brings under the consideration of the tribunal which has to judge of the guilt or innocence of the prisoner. It is to be considered *first*, whether the act was done—whether the oath was administered? and *secondly*, whether the oath be of the description alleged in the indictment? The purpose or intention of the party, except that he intended to administer the oath, is not charged here. Whether his intentions were guilty or innocent is not stated, and is therefore excluded from our inquiry as not essential to it. From the beginning to the end of the major proposition of this indictment, you will not find any thing alleged as to the criminal intention of the prisoner further than what the charge necessarily implies, namely, that he *intentionally* administered an oath of the description there mentioned.

Such is the charge stated in the major proposition of this indictment, and I need hardly observe to your lordships, that this charge cannot be extended or rendered broader by any thing contained in the minor proposition, or subsequent part of the indictment. In this part of it the prosecutor's allegations must be confined to the charge contained in the major proposition, and to such facts as may be proved in support of that charge, and in so far as they go beyond that charge his allegations must be rejected and dismissed from our minds in judging of the present case in all its stages.

In the minor proposition of this indictment it is stated, that the panel "wickedly, maliciously, and feloniously administered, or caused to be administered, an oath binding," &c. in the terms there set forth. The word "traitorously" which stood in the former indictments, is omitted here, and the omission is certainly a proper one; but the act is here said to have been done wickedly and feloniously. These words are very properly used with reference to the statute which declared this act to be a felony, and prohibits it under the sanction of a capital punishment, but not in reference to any thing extraneous to the statute, which the purpose and intentions of the party, except that he intended to administer the oath, certainly are.

If the crime be described as it must be, and is set forth in the major proposition, the prosecutor is entitled to prove that the prisoner intended to administer the oath; that he did it intentionally; and this he justly calls a wicked and felonious intention; for, it is so, because he intends to do, and does, that which this act

prohibits and punishes with death as a capital crime.

The circumstances stated in the minor proposition, of doing it at secret meetings, &c. further than explanatory of administering the oath, are extraneous, as they are not ingredients of the crime charged in the major proposition. If murder be charged in the major proposition of an indictment, a proof of malicious intention stated in the minor proposition is allowable. If sedition be charged in the major proposition, you allow it to be proved that the party intended to excite disturbance, as that is an essential ingredient in the crime of sedition. But here the crime charged is different. The mere act of administering a certain oath constitutes the whole crime, if the oath is of the description alleged.

I observe it stated, in the ingenious pleading for the public prosecutor, that the intention of the parties and not of the oath must be considered, and that it is absurd to ascribe intention to an oath, "As if there were any sense in personifying an oath and giving it the powers of the understanding and the will." But an oath, or the words of an oath, may be said to intend, with the same propriety as they are said to mean so and so, and there is no personification in the one case more than in the other. What the legislature refers to, is the intendment of the oath and not the intention of parties. They refer to an oath binding to do so and so; and this is clear from a former act of parliament in which the words employed are "purporting or intended." In the major proposition of the indictment, is any thing said as to the intention of parties except as to administering this oath? The intention of the panel to do any other thing than administer the oath is extraneous, and is not charged against him.

Whether he can be allowed to prove that his intentions in what he did were innocent is another question. I must hold he is so entitled, because we cannot convict any man whose intentions are proved to be innocent. The words of the act of parliament say nothing of the intentions of parties; not that the legislature held that where intention is innocent, any person is to be punished; but the legislature may hold, and seems here to hold, that the criminal intention is to be presumed from the commission of the fact which it prohibits—that there is a presumption that any person who administers such an oath is actuated by a wicked and felonious intention. The view of the case which I have now taken, is supported by the terms of the indictment itself; for criminal intention, except as to administering the oath, is no where alleged; and this is right, as nothing else is comprehended in the major proposition.

This brings me back to the major proposition, what is the crime? Administering an oath. What else is included in the charge? Only the nature of the oath or obligation. It must be one purporting or intending to bind the

persons taking the same to commit treason. Assuming the fact, as to the oath being administered, which in this stage of the proceeding we are bound to assume, nothing remains for us but to interpret the oath said to have been administered, and the purport of which is set forth in this indictment. This we must do, in judging of the relevancy, and a most delicate task it is.

Is it, or not, an oath purporting or intending to bind to commit treason? We have no alternative; we must return an answer to this question either in the negative or affirmative—the former if we reject, the latter if we sustain the relevancy of the indictment. And what is the consequence of a judgment to the last effect sustaining the relevancy of this indictment? By that judgment we declare, by our deliberate opinions, that the oath is of the import alleged in the indictment, and declared in the statute. And what is the consequence?—that the administrator of the oath ought to be punished with death. I do not question the right or power of the jury to return a verdict of not guilty although we find the indictment relevant, and although the fact of having administered the oath be proved; but such a verdict would directly contradict our judgment. The Court finds the oath purporting or intending to bind to commit treason, and the jury says it is not of that import. The case is different from other trials, where the direction given to the jury forms no part of the record. If we sustain the relevancy of the indictment, we put an interpretation upon this oath; and that interpretation is to be contradicted if the fact of administering be proved, and the jury find the panel not guilty. The solemn judgment of your lordships, pronounced under the sanction of your oaths, is to be contradicted by a verdict of the jury pronounced by them, under the sacred sanction and obligation of their oaths.

Such is the situation in which we are placed, and it is one peculiar to ourselves; for in England there is no such proceeding as this—there is there nothing analogous to the proceeding in which we are now engaged, nothing analogous to our judgment upon the relevancy. We are, as in former times, when by special indictments, and special findings upon the relevancy, the Court usurped the power of the jury. Certainly nothing could be further from the intention of the legislature than to occasion this; but England being chiefly contemplated by them, such is the effect of the statute in question, that by our deliberate recorded judgment, declaring the administration of the oath to be a capital crime, the jury cannot, if the facts administering the oath be proved, find the panel not guilty, without directly contradicting the solemn recorded decision of the Court.

In a charge of Sedition, I sustain the relevancy without minutely or critically examining the words charged, because I send the whole to the jury, who judge of the seditious intention as well as of the nature of the words.

In Sedition the essence of the crime is intention; and as the jury is to judge of that, the Court can seldom reject an indictment for sedition. Here the question is otherwise. All is before us that goes before the jury. The intendment of the oath is to be collected from the oath itself, and the intention of the party is out of the question. I can well conceive, as was pointed out by the public prosecutor, that an oath might be framed and administered, containing words in a different sense from the common one—a term might be used to denote war, and another to designate the king, &c. These terms might be explained by proof. But here there is nothing of that kind alleged. Here the natural and necessary purport is charged. There is here nothing to be supplied but proof of the administration of the oath. The words of the oath, taken in the natural sense, are said to import an obligation to commit treason. We are to say, whether the words, as set forth in the indictment, do so or not; and in this we are going into the proper province of the jury. The Court and jury are united in fact; and a judge who sustains the relevancy of this indictment must be prepared to say, that, as a jurymen, if the fact of administering the oath be proved, he would return a verdict of guilty.

Am I then prepared to return a verdict of guilty in this case? This is a very serious question, and, permit me to say, it is an awful and a difficult question. As to the oath itself, I agree with lord Hermand in saying it is abominable and shocking. It is impossible to look at it without suspecting, and thinking it probable, it imports an obligation to commit a capital crime. That has been, and is my impression. But the presumption in favour of innocence is not to be redargued by mere suspicion. I am sorry to see, in this information, that the public prosecutor treats this too lightly; he seems to think that the law entertains no such presumption of innocence. I cannot listen to this. I conceive that this presumption is to be found in every code of law which has reason, and religion, and humanity, for a foundation. It is a maxim which ought to be inscribed in indelible characters in the heart of every judge and jurymen; and I was happy to hear from lord Hermand, he is inclined to give full effect to it. To overturn this, there must be legal evidence of guilt, carrying home a degree of conviction short only of absolute certainty. Here suspicion is not sufficient, there must be sufficient proof that this oath imports an obligation to commit treason, to entitle us to sustain the relevancy of this indictment. With this, I shall proceed to the consideration of this oath, for that is the principle upon which I am bound to proceed.

Since this case came before us, a very material alteration has been made upon this oath or its purport. In the two former indictments against the panel, the word "force" did not appear. Here it is introduced, and does, in

say opinion, make a very material alteration in the nature and import of the oath. I shall first consider it as without the word "force," and I have great doubts as to this oath falling within the act of parliament. I shall state the grounds of this doubt, after mentioning why I think the import given to the oath groundless. These considerations which indicate a criminal import here are obvious. *First*, The secret meetings. *Second*, Physical strength contrasted with moral. *Third*, The exertion of violence to obtain an alteration of law, particularly if by numbers. The oath shews, by a brotherhood, that a number of persons were to act. Therefore, taking the whole words together, I suspect the import is criminal. I am now talking of the oath as it stood; and I am considering it as any written instrument is considered. I take the whole of the oath together, and this I conceive to be the way to proceed. In the common case, we give the effect to a written instrument which appears agreeable to its general tendency. If A. and B. dispute about a will, I take what I conceive to have been the intention of the testator. But, here, the case is different. My opinion of the instrument must guide me in both cases; but the sort of proof which makes me prefer A. to B. is very different from that conviction which I must feel before I can declare a prisoner to be guilty of a capital crime. I cannot do this, if a meaning other than the one alleged can reasonably be ascribed to the words.

I have great doubts, taking the oath as it originally stood, whether I be entitled to say it is an oath falling under this act of parliament. I agree with my brother, as to the consequences of the wild scheme of introducing universal suffrage and annual parliaments. They strike us as leading to anarchy, and issuing in military despotism. This feeling, as to the political expediency of the objects expressed in it, naturally creates in the mind a strong suspicion of its treasonable import. But I do not think it a legitimate ground of suspicion, and therefore it ought to be discarded from our minds. This object has been recommended by men of high name. It has been stated to be an essential part of the constitution by men of whose fidelity and loyalty there cannot be a doubt; and therefore our view of the object ought not to influence our determination on this occasion. It has appeared laudable and constitutional to men of upright intentions, and it may have appeared in the same light to the party here. In short, we are bound to make a distinction which is often very essential to the ends of justice, and which has not here been sufficiently attended to—we are bound to distinguish between the end and the means. Whatever opinion we entertain as to the end, we ought not from that to judge of the means. However ruinous the consequences of introducing universal suffrage and annual parliaments may be, the crime of wishing to introduce these is not charged

against the panel. The object is not criminal. The means by which they proposed to attain it constitute the crime, and not the object itself; and, because we think the end would destroy the constitution, we must not infer that treason is the means employed for attaining it. This very end has been recommended by men of the highest name. The duke of Richmond * introduced into Parliament a bill, stating that universal suffrage and annual parliaments are the birthright of the inhabitants of this country, and, until so constituted, the country could not be considered free. No man ever imputed to him treasonable intentions, or a desire to subvert the constitution. In short, in order to get at the import of the oath, we must separate the object in view of the parties from the means employed to attain it; for the means alone were criminal.

Suppose that these men had come under a similar oath, and that their object had been to obtain a repeal of the law as to the slave trade; that it had been either to obtain the law abolishing the slave trade, or a repeal of it; or any other object, as a repeal of the coach tax—you cannot say this oath is an obligation to any crime unless you could say that the same oath for such purposes would be a capital crime. It is therefore our duty to separate all consideration of the object in view from the means employed to carry it into effect. We must look to the terms of the oath itself, and see whether the means would be criminal if employed to obtain any other alteration of any existing law of the country.

Viewing the matter in this light, I may suspect, but how can I be sure any thing illegal was meant by the parties? If the oath had stopped at the obligation to obtain and support "the same to the utmost of my power," the meaning would have been the same. Then as to the words "physical strength," how could I know it was to be illegally exerted? How can I know violence was to be used, when strength does not denote violence? The question is not whether the oath *may* or *does* import an obligation to commit a capital crime, but whether it *necessarily does* so. As to the material words of the oath engaging to exert physical strength, physical strength may be exerted for political purposes, or influencing the legislature, where nothing is done or contemplated at all of a criminal nature. There are instances of this which may be given. We lately have seen a case of a number of misguided and guilty men, setting out to wander on foot from Manchester to London. These were to exert physical strength, and no small share of physical strength, in that expedition. They were guilty, but that they were guilty of a capital crime I doubt. That is an instance of the exertion of physical strength. Higher instances may be found. When it was proposed to recognize the independence of Ame

* Vide 21 New Parl. Hist. 686.

rica, Chatham arose from a bed of sickness, came down to the House of Lords, and employed his voice against what he thought was fraught with disgrace to his country. He exerted intellect, he exerted physical strength, and the exertion proved fatal to him. I say, therefore, it is impossible for us to infer that the mere exertion of physical strength infers crime. It does not necessarily do so, and therefore I am not prepared to return a verdict of guilty against the prisoner.

Such is the opinion I have formed upon the oath as it stood. It is now materially altered. The word "force" is introduced; and the terms of the oath, as it now stands, are: "I will support the same to the utmost of my power, either by moral or physical strength (or force), as the case may require," "Force" is within parenthesis; but this has not been sufficiently explained. It is said, the terms were used "not only synonymously but promiscuously." Whether they were used in the same sense, or sometimes the one and sometimes the other, I cannot tell, I must take it as in the indictment; and this oath does appear to me one which does fall under the act of parliament; one to which the statute does apply; for "force" necessarily denotes violence, and in such a case must have amounted to a capital crime. But while I say that, in this view, the oath falls under the statute, it yet remains to inquire, what is the crime to commit which this oath is an obligation? And this leads me to consider the second question, which is,

If it shall appear the oath is, or may be, of the description alleged, is it incumbent on the prosecutor to specify in the indictment the crime to the commission of which he says the oath imports an obligation?

The public prosecutor contends he is not bound to specify the crime. It is very true he has said the crime is treason; but this, according to his argument, was unnecessary and superfluous; and so far he is right and consistent. For if it be necessary to describe the crime at all, to call it treason is no description. Treason is a generic term as well as felony; and some treasons do not differ more from felony than one treason from another. The prosecutor is sensible of this; and though he has stated the crime to be treason, he says he is not bound to give it any further specification. It is only necessary to look at pages 13 and 14 of the prosecutor's information, to find his doctrine on this subject. On the former page, he says: "Now, what can the prosecutor set forth of the purport or the intendment, which is the essence of the crime, except the terms of the oath itself, and such other circumstances as accompanied the administration of it, as may throw light upon the meaning of the administrators or takers? All this he has done, and more he cannot do. He cannot state more of the facts than he knows; nor can he state more than was actually perpetrated; and the oath is the whole fact and

only source of information. Still less can he be called upon to draw an inference in law from facts that have never existed. The minor proposition is a detail of facts, and has nothing to do with law; and if he had drawn the inference required by the panel, he would not have added one *iota* to the relevancy. He has told your lordships all that was done; the whole facts of the case; and it is the principal part of those facts, that there was an obligation to commit a crime. That this crime, if committed, would have been of a particular description, and effected in a particular way, is nothing to the purpose, as it is not the *intended crime*, but the obligation to commit it, that is the point of ditty." On page 14, the doctrine is explained in still clearer and more unambiguous terms: "He is bound to tell the panel the facts he intends to prove against him, and the law by which they are punishable, in order that he may be prepared for his defence; but he does not know how it can help the panel to shape his defence, to tell him what would have been the legal consequence of an act of which he is not accused, and which he only intended to commit. He might as well be required, in a case of an indictment for an attempt to poison, to specify the mode of death, and the legal consequences of murder. It is maintained, that this indictment would have been perfectly relevant, if it had merely libelled the wicked and malicious administration of the oath charged, without a syllable as to what its purport or intendment is; for if the oath means what the prosecutor alleges, the prosecutor's gloss upon it is mere surplusage. If it did not mean any thing that comes under the act, then to be sure it would be necessary to libel the hidden meaning and purpose with which it is administered and taken, otherwise there would be no relevancy in the charge. But if it openly express the unlawful meaning, as in the present case, it is itself the minor proposition, the connecting link between the major proposition and the conclusion; and the prosecutor knows no addition that can make the syllogism more perfect. *Maj.* The administering an oath of a particular description is a crime; *Min.* You did administer the following oath: *Ergo*, You ought to be punished."

In consistency with this argument, the prosecutor in the commencement states, that "the prisoner's argument rested on the fallacy of treason being the crime charged;" and the prosecutor says, "this is not a charge of treason. The crime of administering an oath alone is charged, and the crime contemplated in the oath is not charged, and need not therefore be specified." This argument is plain and intelligible, and states accurately the true question which is here raised, namely, whether an indictment under this statute is to be held relevant, because it sets forth the purport of the oath merely, without stating whether such oath intended the person taking it to commit murder, or treason, or felony, and still less

stating the treason, or the felony contemplated. This is truly the question. The setting forth that the oath bound to the commission of treason is surplusage. So the prosecutor says, and consistently says. For, if he is bound to explain whether it is treason or felony that is contemplated, he is bound on the same principle to explain what treason it is that is contemplated.

Now I cannot hold an indictment on this statute relevant which does not explain what the crime is to which the oath binds. I cannot do so upon any principle of reason, or any principle of law. The oaths contemplated by the statute, are oaths binding to do a certain act or acts, which, when done, would be treason, murder, or felony. But is it consistent with reason to allow the prosecutor to tell us of the act which it is thus sworn to commit, that he cannot or will not say whether it be treason, or murder, or felony, or what treason, or what felony? Dreadful, indeed, would be the import of this statute, were the prosecutor's interpretation to be sanctioned. A man is to be put on trial for his life, because he administered an oath binding to do an act of which the public prosecutor infers that it may be murder, or that it may be any of the numerous treasons, or that it may be any of the numberless felonies which are punished with death. Attend for a moment to the consequences of this doctrine. If a verdict of guilty be returned, what is found by such a verdict? That the prisoner administered an oath binding to commit any treason or murder, or any felony, punishable with death. A general verdict on this indictment is just an uncertain special verdict. The essence of the guilt of an offence against this statute consists not in the oath, but in the crime which the oath purports to commit. But here is a verdict of guilty, and neither from it, nor from the record can we learn what the crime is, the intention or instigation to commit which forms the essence of the prisoner's guilt. Now, is this consistent with any notions that are, or ever were entertained of criminal law and justice? But the matter does not end here, it involves consequences still more absurd and dreadful. Such a verdict of guilty may be returned, although there are not any two jurymen agreed in opinion as to the prisoner's guilt. One jurymen may think the oath binds to one felony or one treason, and another to a different felony or a different treason. In this very case this may happen. Treason is alleged; but this matters not, for there are ten different treasons, and of eight jurymen each may think a different treason contemplated in the oath. But the principle contended for, and truly at issue, is, that no crime need be specified or described, and such an indictment we must sustain, if we sustain this indictment. Can this doctrine be tolerated, or is it more consistent with law than with reason? Mr. Hume has well explained the law of indict-

ments—[Here his lordship quoted the doctrine of Mr. Hume on this subject]—It is true, the prosecutor says, that that which the oath bound to commit is treason. But can he be allowed to allege that an oath binds to commit treason, when he will not or cannot explain what the treason is which it binds to commit? How would this do, if a capital felony instead of treason were alleged, and the sort of felony were not described? But the prosecutor says that the purport of the oath supplies all the deficiencies. But how can this be? Either the oath is quite clear, or it is not. If the purport of the oath be perfectly clear, if that which it binds to do is so obviously an act of murder, or of treason, or of capital felony, why should not the prosecutor tell us what it is? If treason, what treason it is?—If felony, what felony? It is a rule of common sense, as well as of law, on the one hand not to require from the prosecutor any information or explanation which, from the nature of the case, it may be impossible or difficult for him to give. But, on the other hand, he is certainly bound to give every information and explanation which is material to the case, and which he can give without difficulty. Now, if the purport of the oath be so clear, what prevents him from doing that which he can have no difficulty in doing, namely describing the crime which it binds to commit?

On the other hand, if the purport of the oath be not clear, if it does not distinctly appear from it what the crime is to which it bound, then it never can supply the deficiency in the indictment, or "form the connecting link between the major proposition and the conclusion," or render it unnecessary for the prosecutor to describe the crime to which it is alleged to bind.

The prosecutor puts the case of an oath binding *in terminis* to commit treason. This is an extravagant supposition, and I cannot reason on it. An oath may, no doubt, be administered, binding to commit murder, treason, or felony, *in terminis*. But such an oath could not be in the contemplation of the legislature, and it would be a proof of lunacy rather than an instance of guilt; but, at any rate, this is not the case here. This oath makes no mention of murder, treason, or felony; and its terms, therefore, neither do nor can remove the necessity of explanation; and we recur to the true question, which is, whether it be necessary to specify in the indictment any crime at all, either murder, felony, or treason? I am clearly of opinion that it is.

3. But the prosecutor has specified treason, and this leads me to the third question which I have mentioned—whether the specification and description in this indictment, of the treason said to be contemplated, be accurate and correct, and such as the Court can sustain?

The indictment sets forth, that the oath purported or intended to bind the persons taking the same to commit treason, by obtain-

ing annual parliaments and universal suffrage, by physical strength or force, and thereby effecting the subversion of the established government, laws, and constitution of this kingdom, by unlawful and violent means. This is a description, and the only description contained in this indictment, of the crime charged. Then, as it appears to me, the treason of obtaining annual parliaments and universal suffrage by physical strength or force, is the treason to which the oath is alleged to bind. Now, is this a treason? The prosecutor says he has done what he was not bound to do. He has set forth the treason in the words I have read. If it be treason to obtain annual parliaments and universal suffrage, by physical strength or force, *multo majus* must it be treason to effect the subversion of the established government, laws, and constitution of this kingdom, by unlawful and violent means. Yet this latter has been solemnly adjudged not to be treason. The indictment is the same, as if it had said, that the oath bound to obtain annual parliaments, &c., and thereby to commit treason; or to effect the subversion of the established government, &c. and thereby to commit treason. In short, if we sustain this indictment, we must declare that it is treason to obtain annual parliaments, and so on; or to effect the subversion of the established government, and so on; we must find this to be treason, that is, we must declare a new treason.

The case of Tresilian is familiar to us, I cannot speak of it so lightly as the learned judge who spoke last. Tresilian suffered most justly; and of this I am sure, there is not one of us but would rather suffer his punishment than incur his guilt. But the case of Strafford, at least, cannot be thus spoken of. He was impeached and attainted, as we all know, of high treason, *for endeavouring to subvert the ancient and fundamental laws and government of his majesty's realm*: almost the identical words, and words of precisely the same import with those employed to designate treason in this indictment. We all know the result. The attainder of lord Strafford was reversed by parliament, and whatever may be the opinion entertained of the conduct of that unhappy nobleman, I believe there never has been but one sentiment as to the propriety of this act of reversal. Now the preamble of this act expressly bears, that "the late earl of Strafford was impeached of high treason, upon pretence of endeavouring to subvert the fundamental laws; that he was condemned upon accumulative treasons, none of the pretended crimes being treason apart." And for these and other causes, the act of attainder was repealed, revoked, and reversed.

Consider the two questions I have stated under this head, combined together, and you will see that we are reduced to this dilemma; either we must find that this oath binds to commit a capital crime, when the prosecutor cannot tell what that crime is, or we must declare a new treason. See how your record

will appear. A man is tried, convicted, and executed, and for what? Why for administering an oath binding to commit treason. And what is the treason? Why it is the treason of obtaining annual parliaments and universal suffrage by physical strength or force; or else it is a treason which the prosecutor cannot describe—a treason without a name.

I come now to the fourth question which I propose to consider. This is the question treated in the supplementary information for the prisoner. There is nothing inconsistent in this argument. It proceeds on the assumption, that upon the other points of the case the prosecutor has been successful, and then it is said this difficulty remains, that if he have sufficiently described the oath as binding to commit high treason, then he has made out that the administering such an oath is in itself an act of high treason, and cannot be tried as a felony.

Now, whether this indictment discloses a case of treason, I cannot tell, as the crime is not specified. It may, or it may not be treason, and this is a very powerful additional argument for the necessity of the prosecutor's specifying and describing in his indictment the crime, to the commission of which he states that the oath imports an obligation.

Though the authorities on this point are English authorities, yet the question is one of Scotch law, and I cannot be permitted to say that I am ignorant of the law of England on this subject, for it is the law of Scotland also. It appears to me to be a point made out, that felony merges in treason. As to this, the authorities in pages 14 and 15 of the supplementary information for the prisoner are conclusive, particularly Foster's observation on the case in Dyer; and this being the law of England, I think that, in cases of high treason, it must be the law of Scotland. By the act of Anne, high treason must be tried in Scotland in the same manner as in England. That which is high treason may also be a felony. But if it be tried here as a felony, the act of Anne is violated. By that statute, any act or acts amounting to high treason must be tried as high treason is tried in England. The law has in view what the crime is, not what it may be *denominated*; and if the crime charged be treason, the trial of it must proceed in the manner directed by this statute. And further, the law of high treason in England is the law of high treason in Scotland. The law of high treason is the same in both countries. But the law of high treason in Scotland must be altogether different from the English law of high treason, if an offence may be tried as a felony in Scotland, which, in England, must and could only be tried as high treason. The mode of proceeding, no doubt, in such a case, in the two countries, is different. The case supposes, that if the offence is charged as a felony, consequently the procedure, in the first instance, will be according to the law of felony in each country, and their law of felony

is different, although their law of high treason be the same. But for this reason we are bound not to permit an offence amounting to high treason to be tried here as a felony. The thing cannot be done here in the same way in which it is done in England, but still it must be done. In England, the trial, after it is begun, may be stopped. This is not so here. But here, if the facts are disclosed as they ought to be in the indictment, the Court must thence see whether it be a case of treason, and stop it if it be so, before sending it to a jury. Reference has been made to cases formerly tried here of sedition. I remember perfectly well what was said on one of those occasions, by one whose name can never be mentioned in this place without veneration; I mean the late president Blair, who was then solicitor-general. It was the case of Gerrald. I was counsel for the prisoner. I was then a very young man at the bar, and the circumstance made a corresponding impression on me. It was, in fact, one of the first cases of importance that I had been concerned in. I stated that the facts charged, if any thing, amounted to high treason. Mr. Solicitor General Blair did not state that it was no matter—that he was at liberty to proceed either as for high treason, or as for felony, at his pleasure. But he stated, that if I could make it out to be a case of treason, he would be much obliged to me, that he would take the hint; that he would abandon that indictment, and would proceed against the prisoner for high treason accordingly.*

I will put the case of an indictment for theft, aggravated by house-breaking, and that the facts disclosed in the minor proposition are the attack and capture of the castle of Edinburgh by an armed force, and the plundering it of its stores and ammunition. No doubt this is a theft and housebreaking; but would we consent to try this as a felony? or should we not dismiss such an indictment? Such is the case, independent of the terms of this act of parliament, the 52nd of the king, on which this indictment is laid. But it is said, that the last clause in this act excludes the common law doctrine of felony merging in treason. This clause is in these words. [Here his lordship read the clause.] This is the clause on which the prosecutor founds his argument. The preceding part of the statute would afford no room for arguing that the doctrine of merging did not apply to cases under this act as much as to any other; and this clause appears to me to go very far, though I doubt if it goes far enough to support the prosecutor's argument. For what is his gloss on the clause? He says, first, that by this clause offences amounting to treason are made felonies, or are triable as felonies; and, secondly, that by this clause these offences may be tried and punished either as felonies or as treasons. Now, if such be the import and effect of this clause, it must be

admitted that it makes an immense inroad, both on common and statutory law. Further, it must be admitted, that all this is done by implication merely. If this were the intention of the legislature, why did it not say so expressly? First, it is said it declares a treason to be felony, or to be triable as felony. See how an act of the same sort is treated of by the first authorities in the law, the first authorities in our law, for the laws are the same. [Here his lordship read from p. 27, and p. 28 of the supplementary information, the act 3rd H. 7th, c. 14; lord Coke's observation thereon. Lord Hale's P. C. pages 111, 260, 261; and Foster, pages 200, 201.] Lord Coke and lord Hale state the enacting an offence to be a felony to be a judgment of parliament, that it was not treason; and judge Foster says, that Hale's reasons for bare words not being an overt-act of treason, founded on acts which make the speaking those words felony or misdemeanor, are unanswerable. For, he says, if those words had been deemed overt-acts by the statutes of treasons, the legislature could not with any sort of consistency have treated them as felony or misdemeanor. And, he adds, in a note to the same purpose, I rely on those acts which make words felony or misdemeanor. The prosecutor says, that that is done by this act, which Hale says it cannot be thought that parliament would do; and what Foster says, it could not with any sort of consistency do. But, I admit, that, if the words of the act were explicit, it would be of no use to quote those authorities. The legislature *may* do that which Hale says it cannot be supposed it would do, and which Foster says it could not do with any sort of consistency, and, if it does so, we must bend to its authority. But where it has not done so expressly, and where by inference and implication such a meaning is to be extracted, the authorities referred to, seem sufficient to prevent our adopting such an interpretation. But there is another act which does make certain treasons triable as felonies, the act of the 39th and 40th of the king, which is quoted in this information; and see in what manner it has proceeded, in order to accomplish this matter—[Here his lordship read the act 39th and 40th Geo. 3rd, c. 93.]

But the prosecutor says, secondly, such offences are triable, and may be prosecuted either as felonies, or as treasons. This appears to me to be the most extraordinary part of the whole argument.—In saying this, I look to the consequences that must inevitably follow from such a regulation—1st, as they affect the safety of the subject who may thus be tried substantially for treason, and punished with death, although deprived of all those benefits and safeguards, which, in cases of treason, have been deemed necessary for his protection. I look next to the safety and dignity of the Crown itself. The greatest crimes against the Crown may thus escape from justice. I put the case of an oath to provide

* Gerrald's Case, 2 How. Mod. St. Tr. 866.

poison for the king, or of a person taking an oath to administer poison to the king, and that the poison is actually provided; yet this person may be tried only for a transportable felony, —may even be tried under the 37th of the king, by which he can only be transported for seven years. It appears to me a very difficult matter to put such an interpretation on this act. I think this clause not unattended with difficulty; but, on the whole, I incline to adopt the explanation which is very ingeniously given by the counsel for the prisoner in the supplementary information.

It is not, however, necessary for me, in the view I have of this case, to determine this point. I have not got so far. I am clearly of opinion, that the indictment is not relevant on the other grounds which I have stated, and that it cannot be remitted to the knowledge of an assize.

Lord Pitmilley.—In forming my opinion upon the relevancy of the indictment, I find it necessary to begin by fixing the true import of the oath, for administering which the indictment has been raised against the prisoner at the bar. In considering this point, there are two questions to be attended to, one a question of fact, the other a question of law. We must first fix in our minds, what, in point of fact, the acts were, what the line of conduct was, which the persons taking this oath were bound to perform and to follow; and next, we must determine, in law, whether these facts, and that line of conduct, would have amounted to treason.

In considering the first of these matters, viz. the import of the obligation, I agree completely with the counsel for the prisoner, that we are to consider, not what the administrator intended, but what the oath itself purports. The act of parliament speaks of an oath *purporting or intending*; and, as has been remarked by lord Gillies, in that respect, this act is distinguished from the former act 37th George 3rd, which speaks of an oath *purporting or intended*.

At the same time, this observation is subject to a certain degree of explanation. The act speaks of an oath *purporting or intending*. The word "*intending*," cannot be taken as surplusage. It must have a meaning different from the meaning of the word "*purporting*." The case in the view of the legislature must have been the case of an oath which is ambiguously or mysteriously expressed, the *purport* of which may not be clear to those who have not the key, but the *intention* of which may be matter of proof. In illustration of this, I may remind your lordships of a late trial for forgery, in which we had a letter from an accomplice, to the prisoner, produced, desiring him to send "*soft goods*," or "*soft yarn*," meaning by this expression as appeared from the evidence, forged notes. Now this was a letter *intending*, though not *purporting* a commission for forged bank of England notes. This is the kind of case which must have been in the view of the

legislature, when these words, *purporting or intending* were inserted in this act of parliament.

It is evident, however, that this remark has little practical application at present: For the public prosecutor does not say that the oath given in the indictment had any secret *intention* different from its *purport*, and he does not state facts on which such an allegation might have rested.

I also agree with the prisoner's counsel, that in considering the import of this oath, if there be any thing doubtful in it, the presumption must be in favour of innocence. I do not indeed see that there is room for the application of the maxim referred to by counsel, "*id tantum possumus quod de jure possumus*." But we are not to presume guilt because the public prosecutor alleges guilt. We must see guilt made out before yielding our belief; and until guilt is established, we must hold the presumption to be in favour of innocence.

In the next place, it is plain, that in construing the oath, we must take the whole oath together, and consider it, as one part of it bears upon another; not as five or six different oaths, but as different parts of the same oath.

Now, when this is done, it does not appear to me that there is room for any doubt about the *import* of the oath. The leading proposition is, that the taker is to support the same, that is, to support his endeavours "to obtain for all the people in Great Britain and Ireland, not disqualified by crimes or insanity, the elective franchise, at the age of 21, with free and equal representation, and annual parliaments, to the utmost of his power, either by moral or physical strength (or force), as the case may require." Here it must be observed, first, that physical strength, or force, is directly opposed to, and contradistinguished from moral strength; and, next, we must attend to the circumstances in which this great struggle was to be made. The taker of the oath is to prepare for the attainment of the objects, "by endeavouring to form a brotherhood of affection amongst Britons of every description, who are considered worthy of confidence." Then he is to make his endeavours to obtain annual parliaments, and universal suffrage, "by moral or physical strength (or force), as the case may require;" not defining or limiting the extent or nature of these endeavours, except by the necessity of the case. And, having stated all this, he swears "that neither hopes, fears, rewards, or punishments, shall induce me to inform on, or give evidence against any member or members, collectively, or individually, for any act or expression done or made, in or out, in this or similar societies, under the punishment of death, to be inflicted on me by any member or members of such societies. So help me God, and keep me steadfast." Thus the oath plainly refers to numbers; to those numbers being linked in associations in the strictest confidence; to their acts being such

as might bring upon them trial and punishment, and requiring that they should swear not to inform upon one another under pain of death.

I have read this oath again and again, attending, as I am bound to do, to all its parts—not separating the parts, but taking them as they bear upon one another; and it is impossible for me to put any but one construction upon it.

No doubt the introduction of the word "force," into this indictment strengthens the case on the question of relevancy, but the word "force" does not appear to me so necessary as it does to my brother. For, I take the oath altogether. If the clause in which the word "force" appears had stood by itself, the insertion or omission of this word might have been serious; but, taking the clause along with the rest of the oath, the meaning of the whole is clear.

It is in vain to say, that the oath amounts to nothing more than if it had contained a mere vague engagement to support universal suffrage and annual parliaments, to the utmost power of the persons taking the oath. The difference between such an oath and the one in the indictment is, that the former might comprehend all that is in the latter, but it would not have necessarily done so. There would have been room for the legal presumption of innocence,

It is also in vain to say, there are many ways in which lawful endeavours, by moral or physical strength, or force, may be employed to obtain universal suffrage and annual parliaments; as making journeys; making speeches; erecting hustings; keeping off crowds, &c. It is certainly true, the person taking the oath may be bound to do these things, but is *he bound to do nothing more?* What means the brotherhood of affection—the oath of secrecy—the infliction of death in case of revealing—if all that was intended was to do the innocent things above-mentioned? It is impossible for any man, consulting soberly his reason, to think such was the meaning of the oath. There is no presumption of innocence, no stretch of charity, which can warrant such a conclusion.

It is said, there are unlawful acts by which universal suffrage and annual parliaments might be obtained, which are not treasonable acts, as arresting members of parliament, &c. This is true; and, as the particular acts to be done are not defined in the oath itself, it is necessary to take the whole oath, and to consider what is the true import of the engagement. If there were any doubt, I should construe it in favour of innocence; but I cannot have any doubt, when, for an object that could only be legally obtained through parliament, physical strength or force, with all the concomitants mentioned in the oath, was to be employed.

I do not take it much into account in considering the case, that the object to be attained

was annual parliaments and universal suffrage. In the mind of every cool inquirer, the effects of universal suffrage and annual parliaments must be deprecated; but I put the case on the same footing as an attempt to effect any law whatever. The difference is only this, that the extravagance of the object here in view shows more distinctly that the parties were determined to resort to strong measures. It is the means to be resorted to for the attainment of an object of general concern—the employment of physical strength or force—and the whole circumstances referred to in the oath, that leave in my mind no doubt as to the nature of the criminal intentions.

It is in this view that it appears to me this word "force" is not so important as has been supposed. I shall just take the case that has been put, for the sake of argument, in the very able and ingenious paper by Mr. Moncrieff. I shall suppose that the oath might have been binding in a court of law, and that the takers were told, the blow is now to be struck; compulsory measures are to be used, and you must join us in them. Is it possible to say that he might answer, I will make speeches, and print them: I will assist in putting up hustings, and so forth, but I will do nothing illegal. "*Id tantum possumus quod de jure possumus.*" The reply would have been, You are bound to do the things you mention; but if you did not mean to do a great deal more, you need not have come under such an obligation.

Having said this much on the import of the oath, the next question is an inquiry in point of law,

Does the oath amount to treason? Upon this subject the authorities have been so frequently referred to, so often quoted in your presence, and read by us in private, and are so well stated in two or three pages of the information for the prosecutor, that I shall not detain you by going over them. The principle is simply this: that an attempt to obtain, by open force, such objects as were in view, with or without warlike instruments, is the crime of treason. And I shall only make this observation, that, even if the measures complained of by the parties to the oath were not sanctioned by law, yet it would be the crime of treason to introduce new measures of general concern by force, and without the intervention of parliament; and still more when the attempt is to overturn what is sanctioned by law. I shall just beg leave to read what Judge Foster says, in stating the case of Damaree: "If," says he, "the meeting-houses of the Protestant dissenters had been erected and supported in defiance of all law, a rising to destroy such houses in general would have fallen under the rule laid down in Keeling, with regard to the demolishing all bawdy-houses. But since the meeting houses of Protestant dissenters are, by the toleration act, taken under the protection of the law, the insurrection in the present case was to be considered as a public declaration by the rabble

against that act, and an attempt to render it ineffectual by numbers and open force;" an attempt by force and violence to take law into their hands, and bring about a matter of general concern.

Without adding more on this point of the case, I am clearly of opinion, that the oath purports and intends an obligation to do certain things; which things, if done, would have amounted by law to the crime of treason. In giving this opinion, I feel all the consequences which have been so eloquently stated by my brother. I admit, that if the jury shall think otherwise, they will differ from the opinion of the Court—but this I cannot help—I am bound to give my opinion upon the relevancy of the indictment. I am bound, in doing so, to judge of the import of the oath. I do it conscientiously, and the jury will do the same.

The next question is, whether the indictment is not relevant, because it does not specify the kind of treason which the persons taking the oath were bound to commit? This, I apprehend, is strictly and entirely a question about the technical form of an indictment by the law of Scotland. It does not appear to me to embrace any question of the law of treason whatever. It goes to a question of form only, and must be regulated by general principles applicable to other cases, as well as to that of treason.

The major proposition does not charge the crime of treason. It charges the statutory felony of administering an oath, purporting or intending to commit treason. It is founded entirely upon the act of the 52nd of the king. It merely recites the act; it quotes the whole three clauses engrossed in the act of parliament.

What then does the minor proposition do? First, it asserts, as is necessary in every indictment, that the panel is guilty of one or other of the crimes charged in the major proposition. After making this assertion, it goes on to the assumption; and it mentions distinctly the times when this is said to have been done, the places, the persons to whom the oath is said to have been administered. All this is distinctly pointed out. The manner of the criminal act is next announced, in the best way it could be done, by engrossing the oath itself. The minor proposition goes on to say, that the oath purports to bind to commit treason. This is an inference in law that is to be judged of from the oath itself.

This matter may be illustrated by an example. Suppose an indictment accused a person of murder. The minor proposition must state the manner of committing the crime, whether it was by stabbing, or poisoning, or otherwise. To state generally the crime of murder would not do; but the manner of committing it must be mentioned. But, if it were an indictment under the 52nd of the king, for administering an oath purporting or intending to bind to commit murder, and if the oath bore in general,

and without further specification, that the taker was to murder all who should oppose him, it would not be necessary to do any thing more in the indictment, than just to libel the oath itself, and then assert in general terms that it purported to bind to commit murder.

It is said, there are many felonies, and many treasons; and that it is necessary therefore to specify the kind of treason contemplated. Cases were ingeniously put—one of felony, and one of treason. The case of an oath binding to commit a felony was first stated by Mr. Cranstoun: the case was put of a person bound to carry away a certain quantity of corn; and, it was said, the public prosecutor could not recite the oath, and then generally and vaguely assert, that it bound to commit a felony, as it might be one of many different felonies. In the same way, a case was put of a treason said to be committed, by an oath binding the taker to deliver goods or money to a person in France, which it was said might amount to one or other of various treasons.

But observe, there is in the cases put, not a mere general engagement to do whatever may be required, as in the case in the oath libelled, but an engagement to do a particular act, carrying away corn in the one case, and delivering goods to a person in France in the other. In such cases, it may be, that the public prosecutor should inquire about the particular felony, or treason in contemplation, and explain it in the minor proposition.

But there appears to me to be, independent of what has now been observed, a decisive answer to this objection to the indictment under consideration. The objection is, that the indictment ought to have specified the particular treason which the takers are said to be bound to commit. That without such specification, one or more jurymen may have one kind of treason in view, and others may contemplate other treasons.

Now, it is admitted in the information for the panel, and no lawyer could venture to dispute it, that the case might have been laid alternatively as an oath binding to commit one specified treason, or otherwise a different kind of treason also specified, and so on through the whole catalogue. The words of the panel's information are, "The informant is not at present advised of any objection that could be made to an indictment in this court, which laid the case *alternatively*, as an oath binding to compass the king's death; or otherwise, an oath binding to levy war; or otherwise an oath binding to conspire to levy war, &c." In short, the public prosecutor had nothing to do but to enumerate all the different kinds of treason. He might have taken the range of all the treasons known in the law; and, it is admitted, that this would have been a relevant libel.

Now, I would ask, what better information could have been given to the prisoner by such an indictment, to enable him to prepare for his trial, or to us to judge of the relevancy of the

indictment, or to the jury to guide them in their deliberations? Is it better for the prisoner, the Court, or the jury to state the charge as is here done, or to state that the oath was an oath purporting to bind to commit treason by compassing the king's death, or by levying war, or by adhering to the king's enemies, and so on? No further information surely is given in the one case than in the other. I cannot conceive, therefore, why it should be stated as necessary to specify the treason in this indictment. The only purpose on account of which this is ever required is, that the prisoner and the Court may know what he is accused of, and for what he is brought to his trial. In a charge of murder it is necessary to tell him whether it was by stabbing or knocking down, or in what manner the crime was committed, that he may prepare for his defence, and that the Court may judge of the relevancy. If a man be accused of murder, and the thing he has done do not amount to murder, the Court will interrupt the trial. If the manner of the act were not specified, the Court might find relevant what they would not think so if they knew the facts.

The next point I am to consider, is, the fault found with the indictment, in stating that the oath bound the persons taking it "to commit treason, by obtaining annual parliaments and universal suffrage by physical strength or force, and thereby effecting the subversion of the established government, laws, and constitution of this kingdom, by unlawful and violent means." It is said, this is a *definition* of an alleged treason, and that it introduces a new species of treason not recognized by the law of this country.

My answer is, 1st, That the passage quoted is no *definition* of treason—no description of treason—and it could not have been introduced in that part of the indictment, if it had been intended as a definition or description of the alleged treason. It is only a brief statement by the public prosecutor of what he says is the import of the oath, and of what would be the consequences; *first*, of what the oath bound those who took it to do; and, next, of the result which he said would have followed, if the thing had been done. He says, before quoting the oath, that it is an oath binding the takers to obtain universal suffrage and annual parliaments by physical strength or force; and then he states his inference, that if they had done so, they would have effected the subversion of the established government, laws, and constitution of this kingdom, by unlawful and violent means. I am as much satisfied as any person can be, that, if the words above quoted amounted to a charge of a particular treason, if that were to be viewed as a description of a treason alleged against the panel, we could not have sustained the indictment. But there is a wide distinction between the prosecutor giving his own account of particular things that were to be done, and drawing his own conclusion, and his stating these things as a substantive treason.

2ndly, The words above quoted from the indictment are surplusage. The public prosecutor was not under the necessity of stating any thing of this. He might have stopped in his description at the word "treason," but he has gone on; and, I do not think he has, by doing so, made the indictment either better or worse. In a case of rape, where, after the fact had been stated, the deed was said to have been committed, by having carnal dealing with the woman's body, it was objected, that this might have been some inferior abuse of the woman's person. But the answer which was sustained by the Court, was, that the expressions objected to were mere surplusage; that the crime was properly charged in the major proposition, and the alleged facts distinctly set forth in the first part of the *minor*.

The last point of this case, which deserves consideration, is the question, Whether this crime being treason, we must hold that the felony merges in the treason, and cannot be tried as a felony? I agree with my brother, that the disquisition upon this subject, in Mr. Grant's paper is ingenious and able. I read the argument with great pleasure, and obtained much information from it. But, after giving it full consideration, it does not appear to me to be well founded.

Upon this branch of the case, I observe, *first*, that the common law maxim of the law of England, that the greater crime drowns the lesser, is directly the reverse of the common law maxim of this country. Here, it is well established, that when a fact amounts to one or other crime of different denominations, it is in the power of the public prosecutor to charge the lesser and not the greater. This distinction between the laws of the two countries appears to result from prosecutions being conducted at the instance of the private party generally in the one country, and there being a public prosecutor in the other.

With regard to the crime of treason in particular, there is no question that, in Scotland, before the Union; the maxim above referred to was followed in cases of treason as well as in cases of other crimes. There were aggravated thefts and murders which were also held to be treasons. In these cases, the prosecutor might charge the crime either as a treason, or as a theft or murder. Nay more, when he charged the crime alternatively in the indictment, he might depart *at the trial* from the higher charge, and insist in the lesser. Sir George M'Kenzie disapproves of this, because the panel might be taken at unawares, and could not be prepared at his trial, not knowing before hand in which charge the public prosecutor was to insist. But it never was disputed that the public prosecutor had an undoubted right to make the election, when drawing his indictment, and to charge the lower crime.*—

Extreme cases may be put for the sake of

* 1 Hume's Comm. Tr. for Cr. 276.

illustrating an argument; but I would beg leave to answer such cases, by supposing a case that might readily have occurred in the prosecution of the prisoner at the bar. Let it be supposed that he had been charged in the indictment with the crime of sedition:—or suppose that the indictment had charged him with sedition, as also with being guilty under the act of the 52d George 3rd.:—an indictment laid in either of these ways would have been relevant unquestionably, and probably few persons would have disapproved of it. Yet, according to the argument now under consideration, such an indictment must have been quashed. We should have been told, that the sedition, or the statutory crime, had merged in treason, and that the prisoner could only be tried for treason, and must have a grand jury and 35 peremptory challenges.

In lord George Gordon's case, lord Mansfield mentions, among acts of treason, insurrections "*to resist execution of the militia laws.*" We have had such insurrections in Scotland, and the offenders have been tried in the usual way, without a doubt ever having been expressed on the legality of the proceeding.

In many cases of aggravated sedition, the Courts have delivered it as their opinion, that the facts stated in the indictment might have been charged as treason; but they never thought of stopping short on this account, and of denying the right of the public prosecutor to bring the offender to justice as guilty of sedition.

In short there is no precedent for the doctrine contended for by Mr. Grant, in any case circumstanced like the present; and it would be very much to be regretted if there was any foundation for it. The only case in which this doctrine was broached, was in the case of *M'Lauchlan*, reported by *M'Laurin*.† I do not found on the decision pronounced in that case as a judgment on the point; for the sounder opinion appears to be, that the prisoner, in the case referred to, was guilty of riot and not of treason. But I mention the case as the only one in which the point of law now so strenuously contended for, was so much as hinted at, or brought under the consideration of the Court.

But, whatever may be the rule in the general case, the first and last clause in the act 52nd George 3rd, is decisive against the doctrine in the present case. These clauses, which are recited in the papers, are perfectly decisive of the question; and the argument which results from the simple reading of them, is unanswerable.

Mr. Grant refers to the "*wary clause*" mentioned by lord Hale, as in 1st and 2nd Philip and Mary, cap. 3, &c. But the existence of this "*wary clause*" in these old acts of parlia-

ment, is very much against the argument for the prisoner; for it would have been an easy matter, if this had been the intention of the legislature, to insert the same "*wary clause*" in the first part or preamble of the act of the 52nd of the king.

On the whole, I am of opinion that the indictment is relevant.

Lord Reston.—This is undoubtedly a most important and interesting case, on various considerations. It is important and interesting, because this and the case of *Edgar*, are the first occasions we have had to consider the nature of the act of parliament upon which the indictments are founded. It is of importance, because the charge against the panel is a capital charge; and, it is likewise of importance because, although this indictment contain no charge of treason, yet, according to the view of the prosecutor, several hundred persons must have had the commission of treason in contemplation. I am not sure, if this case has not also acquired an additional degree of interest from the very able manner in which it has been argued. It has been argued with most consummate ability on both sides of the bar. Particularly on the part of the prisoner, there has been a degree of anxiety, ingenuity, and talent, exerted, which I hope, I may say, without being illiberal, could not be surpassed by the bar of any other country. I believe, in very few cases, if in any, has so great a mass of talent been united in favour of one prisoner, as in the present.

The indictment is founded entirely on the 52nd of the king. It is entirely a statutory offence which is charged. The major proposition consists of three different clauses, quoted from the act of parliament. The substance of them is, that it is made felony, without benefit of clergy, to administer, or cause to be administered, or aid or assist at the administering of any oath or engagement, purporting or intending to bind the "person taking the same to commit any treason, or murder, or any felony punishable by law with death." This is the charge, and a statutory one alone, which is made against the prisoner at the bar. In the minor proposition, he is stated to have been guilty of one or more of the crimes libelled in the major: "In so far as he did at secret meetings, and on other occasions, at Glasgow, and in the vicinity thereof, in the course of the months of November and December, 1816, and January and February, 1817, wickedly, maliciously, and feloniously, administer, or cause to be administered, or did aid or assist at the administering, to a great number of persons, to the amount of several hundreds, an oath or engagement, or an engagement or obligation in the nature of an oath, purporting or intending to bind the persons taking the same to commit treason, by obtaining annual parliaments and universal suffrage, by physical strength or force, and thereby effecting the subversion of the established government, laws, and consti-

* Case of *Duncan*, *Reidpath*, and *Mitchell*, 5 How. Mod. St. Tr. 827; case of *Cameron* and *Menzies*, *ibid.* 1165.

† 17 How. St. Tr. 998.

tation of this kingdom by unlawful and violent means."

In this part of the minor proposition of the libel, the public prosecutor confines his charge to the panel having administered an oath, "purporting or intending to bind to commit treason," without defining or intending to define the particular species of treason which the oath bound him to commit; and, he then gives his own commentary upon the oath which was taken.

The minor proposition then gives the tenor of the oath.

This being done, the libel then states the particular instances in which this oath was so administered, and the circumstances in which it was administered by the panel. It specifies that it was administered, and at secret meetings, at Hugh Dickson's, on the 20th of December, 1816. 2dly, At William Legget's on the 1st of January, 1817. 3dly, At Niell Munn's, on the 4th of that month; 4thly, At the house of John Robertson, on the 5th of February; and lastly, that the prisoner was apprehended at another meeting held for the same purpose, and that on that occasion he assumed a false name.

This is the indictment we are called upon to judge of; and, upon it, three questions have arisen, upon which it is necessary that we should have distinct opinions.

In the first place (and I agree in considering this the main point at issue),—whether the oath be of such a nature as to come within the statute?

The second question is, whether the indictment (supposing the oath to be such as to make room for the application of the statute) be drawn with such precision as to warrant it to be sent to a jury?

And, the last is the new question eloquently argued in the supplementary information. It is here assumed that the oath is sufficient, and the specification complete; and it is argued, that, upon this supposition, the oath must have purported or intended an obligation to commit the species of treason, known by the name of levying war against the king:—that such oath must be an overt act of treason, under the head of compassing or imagining the death of the king, and actual treason, under 36th George 3rd. c. 7. as compassing to levy war against the king, or overawe parliament; that, therefore, the panel cannot be tried under the 52nd of the king, but for treason only; because, according to the maxim of the English law, which in treason is the law of Scotland, the felony merges in the treason. These are the three points upon which it is necessary to form our opinions; and, upon each of them, I shall make a few observations.

The first question is, what is the import of the oath here administered? Upon this subject, my view is so obvious, that it could not fail to be anticipated by the judges who have already spoken; and it has been anticipated

by lord Pitmilly. But, because my view is an obvious one, it is not, upon that account, the less likely to be well founded; for, I conceive, that in such questions, the most natural view is the most likely to be that which is correct. When the crime consists in the language employed, the most obvious meaning of that language is the safest and fairest to apply to the situation of the panel. Crimes are generally committed by persons in the lower ranks of life; and we must consider in what sense the language employed must have presented itself to their minds when they employed it. Your lordships will never allow the public prosecutor, by forced construction, to infer a criminal meaning, where the words are obviously innocent. But on the other hand, as little will you allow the counsel for the panel, by ingenious refinements, to make that innocent, which, according to the common meaning of words, is, in the minds of impartial persons, criminal. In such case, your lordships, first, and the jury afterwards, will fall to mediate between the different parties, and draw an impartial conclusion from the whole circumstances of the case.

Here, I conceive the purport or intention of the oath must be taken chiefly from the terms employed; but I do not consider it is wholly incompetent for the public prosecutor, in this case, to have recourse to circumstances which do not appear *ex facie* of the oath. I think he is not to be confined to the precise words of the oath. Here, there are two words employed, *purporting or intending*. On looking into the dictionary, I find that "to purport" is "to intend." If the word intend, had not been used in the statute, I should have understood that purport and intend were to be considered as synonymous; but the statute uses both words, and I conceive that it must have employed them as having different meanings; I apprehend, that, when both are used, we must consider their difference. Suppose the parties had used a cipher, and that it had consisted in the use of common words, with another meaning, it would be competent, under this act, to libel this oath, and prove what was intended by the cipher. The prosecutor might have libelled that the intention was criminal, though the words of the oath were *ex facie* innocent. He might have done so under the word "intend," in the act of parliament. As the two words must be understood to have different meanings here, I hold "purport" to denote the common meaning of words, and "intend," any meaning attached to the words by the parties, though different from the sense generally given to them.

In that view, I consider the public prosecutor, in this case, is entitled to libel and prove circumstances indicative of intention. He has libelled, and is entitled to prove such indicia of intention, as, that the oath was administered at secret meetings, and to great numbers of persons.

But, in the present case, in order to ascer-

tain the import and intention of this oath, there is no occasion to go beyond the terms employed in it. To understand the meaning of the oath, it is just requisite that a person shall read it from beginning to end, and say what is the meaning it conveys to his mind. It is impossible, in my humble opinion, to read it with no other object than to ascertain the meaning and intention, without being convinced that it was highly criminal. It implies that there was to be an association consisting of many persons, bound by an oath—that their proceedings were to be kept secret—and all this under the sanction of the death of informers, to be inflicted by any member of the association. The object in view was to bring about, by physical strength or force, what, if brought about, would have been a complete subversion of the present government—annual parliaments, and universal suffrage, “the elective franchise at the age of 21, with free and equal representation, and annual parliaments.”

That is the meaning which the oath conveys to my mind, on reading it with no other view than to discover its meaning. But, I have no objection to analyse the oath in parts. The objection I have to the argument for the panel is, that it considers the oath as composed of different *wholes*, capable of standing by themselves; whereas there is only one oath consisting of different parts.

I shall, however, consider them separately.

The oath sets out with taking the parties bound, to “persevere in endeavouring to form a brotherhood of affection amongst Britons of every description, who are considered worthy of confidence.” To form such brotherhood of affection under the sanction of an oath is not in itself a crime, but there is something so peculiar in this, that it must excite attention. One would inquire, what was to be the meaning of this brotherhood? Could such a brotherhood be formed for the mere purposes of charity and benevolence? Would there be the formality of an oath for any thing of this kind? It might be innocent, but would be unintelligible. We think what is to follow. It is enough to excite attention and suspicion as to the object. For this, we must go to the next clause: “I will persevere in my endeavours to obtain for all the people in Great Britain and Ireland, not disqualified by crimes or insanity, the elective franchise at the age of 21, with free and equal representation, and annual parliaments.” The object, therefore, was clearly political. It was not an institution for charity or general acts of friendship; but, it was a political institution. Politics alone were in the view of the parties; and what was the species of politics in view? The object was, to bring about annual parliaments and universal suffrage, which all sober-minded persons consider as a complete subversion of the government, and quite inconsistent with any rational ideas of liberty. Such was the object of this brotherhood when formed.

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Even this might not have been matter of accusation against the parties, if they had merely confined themselves to speculation and discussion. There might have been nothing to find fault with, if they had confined themselves to mere philosophical speculation on the different kinds of government, and given the preference to that which is stated in the oath. But associations were formed; not one, but many, in order to bring about the change in the government. They were treading upon dangerous ground; and it would depend upon the means they were to have used, whether their conduct was to be considered criminal. What were the means they had in view? See the next paragraph: “And that I will support the same to the utmost of my power, either by moral or physical strength (or force), as the case may require. I say here the object was to be brought about by illegal means. It is illegal to bring about this complete change and subversion of the constitution, by physical force. The association was formed for a political purpose; the object was, to introduce what was dangerous and irrational; and this was to be done by illegal means.

And the consciousness of the parties themselves, that they were to act illegally, appears from the last clause. The meetings were secret. “And I do further swear, that neither hopes, fears, rewards, or punishments shall induce me to inform on, or give evidence against any member or members, collectively or individually, for any act or expression done or made, in or out, in this or similar societies, under the punishment of death, to be inflicted on me by any member or members of such societies. So help me God, and keep me steadfast!” Here is complete demonstration that the parties engaged in this business understood the means to be employed were illegal. Their conduct was illegal, and they were conscious of it. Else why had they recourse to an oath of secrecy? This clause shews, too, that many people were to be engaged, and various associations formed, and all to be united together under the sanction of the oath. And to whom was to be given the right of punishing by death a breach of secrecy? To any member or members, not only of that particular society, but to all members of any other society of the same description. So that they were all to constitute one society, and the power of life and death was to be given to any member of the association.

I say, therefore, that, considering the oath either as a whole or in parts in subordination to each other, it is clearly illegal, and it purports and intends to do that which the parties themselves knew to be illegal.

All this would have been highly criminal, suppose no act of parliament had been passed. All this would have been a high crime at common law. But here we are called to judge of a particular act of parliament, and to judge whether this crime is what is meant by the act of parliament. The act of parliament,

makes the crime consist in the oath itself; and it entitles the public prosecutor to apprehend persons, and to deal with them as guilty when the oath is taken.

In order to understand the character of the oath, I must figure to myself what are the acts the oath led the parties to commit. If the parties had not rested upon the oath, but had gone into action—if they had been successful, what would have been the consequence? They must have overturned the government and the present constitution of things. We have not at present universal suffrage and annual parliaments. And the parties must have effected this change by those means which they knew to be illegal. Had the prosecutor waited till they attempted to carry their plans into execution, and were unsuccessful, what would have been their crime? Treason—levying war against the king. I conceive this is the species of crime of which they would have been guilty. It is impossible to go with any minuteness into the kind of conduct they might have adopted. Had they been allowed to act upon the oath, and been unsuccessful, their crimes might have been charged as compassing and imagining the king's death. The facts charged lead necessarily to such conclusion. And therefore, under this statute, I can have no doubt, that what is stated here amounts to the major proposition in the libel, and that this is an oath purporting and binding the person taking it to commit treason. I therefore answer the first question in favour of the public prosecutor—that the oath is sufficient to bring the parties within the act of parliament.

The next question is, how far the charge is sufficiently explicit; and this is the only point upon which I have ever entertained difficulty. I first supposed the want of specification of the species of treason, must have cast the indictment altogether. I am now of opinion, that it does not. Though still the case appears to me not altogether without difficulty. In no case will impossibilities be asked of a public prosecutor. In the present case, the libel is on this act of parliament. You cannot oblige him to charge any overt act beyond the act itself. The act entitles him, after the oath is administered, to consider the crime completed, and therefore, all that can be asked of him, is to charge the time, place, and circumstances in which the oath was administered, and the treasonable nature of it. That is all that can absolutely be demanded of him to do; and he has done this in the present indictment. He has specified four different meetings, at which the oath was administered, and a fifth for the purpose of its being administered. He has mentioned the places and the circumstances in which the oath was administered. He has mentioned that it was administered at secret meetings. He has, therefore, in the major proposition, stated the crime which he charges, and in the minor all the facts within his knowledge; and therefore, I am of opinion,

he has done every thing which he was bound to do. He was not bound to state inferences more than he has done. He has stated all the act required of him, although nothing was done in consequence of it.

At the same time, that does not altogether free us from difficulty in this case. I think the public prosecutor has done every thing which technically he was bound to do. He was bound to state the specific charge against the prisoner. He has fairly cited the clauses of the act of parliament. In the minor, he has stated all the facts consistent with his knowledge. I at first thought he ought to have done a little more, though I now incline to think he was not bound to do more. The crime consisting in administering an oath purporting or intending to bind to commit treason, the public prosecutor could not allege that the oath applied, at once, to all the classes of treason. The statute applies to the whole range of treasons; but, when any individual oath comes under consideration, the prosecutor might state the particular species of treason apparently contemplated. I came to this conclusion the more readily, that this was just the process of reasoning by which I came to be satisfied, that the oath is within the act of parliament. When I read the oath, and reflected what was the crime intended to be committed, unless I had been satisfied that the parties were bound to commit some individual kind of treason, I could not have been satisfied that the act applied to the case. I read the oath, I then reflected what would have been the crime if the oath had been acted upon. I thought the fair inference from it was, that those who took it bound themselves to commit treason, by levying war against the king. Therefore, I first thought it was the duty of the public prosecutor, if he followed the same train of reasoning I did, to state the result of that reasoning; but though this might have been done, I now think it is not required to be done in the technical formation of an indictment on this statute. This is a statutory offence, and the public prosecutor is not bound to be more specific than the statute itself is. In the minor proposition he states all the facts within his knowledge, and is not bound to state every inference that occurs. I should have liked the indictment better if it had stated the species of treason in view; but I cannot think it irrelevant on account of its not having done so. The objection at best is merely technical; and the public prosecutor has not failed to do any thing he was technically bound to do.

The only other question is, how far the felony merges in the treason. By the common law of England, if I understand it, the inferior always merges in the higher denomination of crime. Trespass is drowned in a felony, and on the same principle felony is drowned in treason; and there is nothing peculiar to the law of treason in this respect. On the other hand, it is clear, that the law of Scotland is

directly the reverse. There is no such merging in our law of the inferior in the higher crime, and the public prosecutor may always choose which he pleases; he may take either the lower or the higher species.* It is easy to see the reason of this difference between the practice of the two countries. In the one country there is a public prosecutor, and in the other none. I shall not say which institution is best; both are well administered, and answer well the purposes of justice.

There are two questions which naturally arise here. The first is, whether the common law of Scotland, in this respect, was put an end to by 7th queen Anne, c. 21. Into this point I do not think myself bound to go at great length, as the act of parliament, on which the indictment is founded, fixes the matter as to this indictment. With all Mr. Grant's ingenuity, however, he has not convinced me that the common law of Scotland here is put an end to. Its preamble proceeds on the expediency, "that the laws of both parts of Great Britain should agree as near as may be, especially those which relate to high treason, and the proceedings thereupon; as to the nature of the crime; the method of prosecution and trial; and also the forfeitures and punishments of that offence, which are of the greatest consequence to the crown and the subject." It then enacts, that the same acts should constitute high treason in both parts of the kingdom, and provides for the appointment of a court of oyer and terminer for trial of high treason in such manner as is used in England.

Is this to be held by implication to put an end to a common law principle previously existing, or of the public prosecutor having his choice of charging the higher or lower denomination of offence as may appear to him to be proper? I am not prepared to say so.

I felt more difficulty from Mr. Grant's able and ingenious commentary on the third clause of the act, which provides, that "the justice-court, and other courts having power to judge in cases of high treason, and misprision of high treason in Scotland, shall have full power and authority, and are hereby required to inquire, by the oaths of twelve or more good and lawful men, in the shire or stewartry where the courts shall sit, of all high treasons, and misprision of high treason, committed within the shires or stewartries; and thereupon to proceed, hear, and determine the said offences whereof any person shall be indicted before them, in such manner as the court of Queen's-bench, or justices of oyer and terminer in England may do."

If I had understood that, in consequence of this clause, part of the power of the public prosecutor was conferred upon the Court of Justiciary, to find out when treason is committed, and not merely to judge of cases coming before them, then I should have

thought our judges should proceed as the English judges are said to do. But I do not understand this to be the meaning of the clause, but that it is merely following out the first clause, establishing the same form of process in the two countries. I do not think it would entitle us to quash an indictment, or discharge a jury once impanelled, as Judge Foster says he would have done, so as to make way for a second trial for the same facts, under the denomination of treason; and, I do not think it is to be implied from the statute, that the public prosecutor's power of choosing his libel is taken from him.

But, in the second place, the case here is simple, and all difficulty is removed by the act of parliament on which the indictment is founded. I am not able to appreciate the value of all the authorities quoted by Mr. Grant on this branch of the case. I am bound to understand them as well as in my power; but, I must admit, I have not been able to go far in an examination of them. They seem, however, to amount to this, that an exception to the common law is not to be extended beyond the letter, and that this holds particularly where the law is taking away something favourable to the subject. I am willing to hold that the statute upon which the indictment is founded, shall not be held *by implication* to make any change in the law on this subject; but, at the same time, its terms must be attended to, and fair play given to them. When I look to the enactment, it applies to *any* treason. It is "any oath or engagement, purporting or intending to bind the person taking the same to commit any treason," &c. It is by implication only, that I am to exclude the obligation to commit any species of treason where the obligation comes up to treason itself. The oaths are all stated as of one description, and as coming under the act.

But this is not all. It is not merely left to implication. The statute § 8, has evidently in contemplation that the same facts which should give rise to a prosecution under it, might, independent of the statute, have been treason itself, so that though felony merge in treason in common, this cannot be held in such a case as the present. It provides, "that any person who shall be tried and acquitted, or convicted of any offence against this act, shall not be liable to be indicted, prosecuted, or tried again for the same offence or fact, as high treason and misprision of treason."

I cannot suppose the act here means any thing, but that a party might be *legally* acquitted or convicted *under this act*, who, but for this act, might have been tried for treason. It is declared that if tried under this act, he cannot be tried as he might otherwise have been. The legislature was aware that an offence under this act might be treason independent of it.

The same observation applies to the other branch of the clause "that nothing in this act, contained shall be construed to extend to,

* 3 Hume, 276.

prevent any person guilty of any offence against this act, and who shall not be tried for the same as an offence against this act, from being tried for the same, as high treason, or misprision of high treason, in such manner as if this act had not been made."

The legislature was afraid that it might be held that, if any person had been guilty of what is described as criminal in the act, it took away the power of charging the same as treason, and it does not say that a guilty person shall not be tried otherwise than under the act; but that if he had been tried under the act, he shall not again be tried in any way for the offence. The legislature thus guarded against the inference that the power of the prosecutor to choose his mode of trial was taken away; and also provided, that no repetition of trial should take place in any form, for an offence as to which a person has once been acquitted or convicted. It is clear to me, therefore, that the legislature had in view, that the same act might be a subject for trial under the statute, and likewise a subject for trial as high treason; and that therefore, here at least, felony does not merge in treason.

Lord Justice Clerk.—I am as fully convinced as any one of your lordships can be, that, in considering the indictment in this case, we are called upon to perform a most important and delicate duty. Important and delicate, I feel it to be, in reference both to the panel at the bar, and to the public at large. I am as much impressed as my brother on my left hand (lord Gillies), by the situation in which the Court is placed, from the necessity which is imposed upon us of deciding on the relevancy of this indictment; but, as this necessity is one imposed upon us by the law of the country, to which we are bound to give obedience, it is impossible for me, for one moment, to hesitate, or shrink from the performance of that duty. Looking to nothing but the discharge of my duty, I am at all times prepared to perform it conscientiously, whatever may be the consequences.

The indictment in this case is the first which has been brought before this Court, on the statute 52nd of the king; and, considering the ability, the ingenuity, the intelligence, and the learning of those, who, in this case, have rendered their united services in support of the defence of this unhappy man, it is not surprising that objections have been stated to this charge, both with regard to its essence, and to the form and character of the indictment. Those objections have been made the subject of most eloquent and learned *vind voce* pleadings; to which it is impossible to do justice without declaring, that, in point of ingenuity and ability, they have not been exceeded at any period of the history of this Court. The argument appeared to your lordships, in reference to the nature of the case itself, to be of such grave and weighty importance, as to deserve to be embodied in informations.

These are now before us; and as to the ability and learning with which they have been prepared, I entirely concur in the opinions which have been expressed by your lordships.

The objections are of a fourfold nature. I shall mention them in the order in which they are presented to us in the informations, though, in delivering my opinion, I shall feel it my duty to proceed, in the first place, to the consideration of the *third* of these objections.

The objections are, *first*, that in this case, founding upon this act of parliament, it was necessary for the public prosecutor to specify, in his indictment, the particular treason which he alleges the oath purported or intended to bind to commit. In the *second* place, that, whether this be his duty or not, he has undertaken to perform it, and has done it in an imperfect manner, having specified and defined no treason that is known in this kingdom. The *third* objection is, that the oath itself is not one which comes up to the sanction of the act of parliament, or which you can sustain as sufficient in the minor proposition, and remit to a jury. The *fourth* and last objection, and which has been brought before us in an able, perspicuous, and argumentative manner is, that supposing the panel wrong in these three objections; and taking the case as submitted by the public prosecutor, the principle that felony merges in treason must apply to this case, with all the consequences which would attend it in England.

I shall proceed to consider the *third* of these objections, because it must be obvious to all of your lordships, that, if the oath, which is the whole essence of the charge before you, be not of the description which the public prosecutor avers, namely, an oath purporting or intending, in itself, to bind to the commission of treason, all the other inquiries are superfluous, and it would be unnecessary to consume your time with any consideration of them.

In considering the meaning of this oath, it is proper to keep in mind, that the act of parliament upon which the indictment is laid, and on the terms of which alone it is rested, was preceded by the statute 37th of the king. The words of that act are before us. Your lordships will see, that, for the purpose of preventing the evils which then existed in the country, that act was passed, declaring that the administering or taking any oath "purporting or intending to bind the person taking the same, to engage in any mutinous or seditious purpose; or to disturb the public peace; or to be of any society or confederacy formed for any such purpose, &c. should be held to be a felony punishable with transportation for seven years." This statute, the 37th of the king, had, till the year 1812, been considered by the legislature as sufficient to meet the evils intended to be remedied; but it so happened, that, in 1812, proceedings took place in England, in the very heart of this kingdom, of such an alarming complexion, as

to call for the deliberate attention of parliament; which was then led to consider the existing state of the law, and provide a remedy for the public safety. The act, the clauses of which have been referred to in this indictment, was accordingly passed, proceeding on the preamble, that "it is expedient that more effectual provisions should be made as to certain oaths." This is the way in which the statute under consideration was introduced, and made a part of the law of the land. The act proceeds, "Be it therefore enacted, &c. that every person who shall, in any manner or form whatsoever, administer, or cause to be administered, or be aiding or assisting at the administering of any oath or engagement, purporting or intending to bind the person taking the same to commit any treason, or murder, or any felony punishable by law with death, be adjudged guilty of felony, and suffer death as a felon, without benefit of clergy," &c. The indictment after reciting this and other clauses, proceeds to state, that the panel is guilty of the said crimes, or of one or more of them, actor, or art and part; and it goes on, in the usual, regular, and technical mode, to set forth the oath, which the panel is averred to have administered, at secret meetings, to a great number of persons, amounting to several hundreds; and which oath the prosecutor avers to be an oath, "purporting or intending to bind the persons taking the same to commit treason, by obtaining annual parliaments and universal suffrage by physical strength, (or force), and thereby effecting the subversion of the established government, laws, and constitution of this kingdom, by unlawful and violent means." Your lordships are therefore under the necessity of giving your opinions, whether this act which is so set forth in the minor proposition—the act of administering a certain oath at the particular times and places therein mentioned, and to the individuals alleged to have taken the same, and, with regard to which, the public prosecutor undertakes to satisfy you and the jury,—is conform to the major proposition, and is, or is not, of the description given of it by the public prosecutor.

In determining this question, I think it right to say, I am of the opinion expressed by your lordships, that, by the words of this act of parliament, as well as in reason, and according to the rules of the common law applicable to such a case, it is only to the words of the oath itself we have to attend; and that we are not in a question as to the purposes or intentions of the administrators, or takers of the oath, in so far as they cannot be made to appear upon the face of the oath itself. As to the assertion, that it was administered to numbers, and at secret meetings, upon that part of the libel I concur with the able argument for the prisoner.

It appears to me necessary to come to a clear understanding of the rules of interpretation, which we are to apply in entering upon

this inquiry. I am of opinion, that it is not by far-fetched, abstruse, intricate, or subtle rules of construction, your lordships are entitled to judge of the meaning of this oath. You are to put upon it the plain meaning which the words, in which it is conceived, would have conveyed, and must be held to have conveyed to persons of plain understanding, dealing with that oath. I am farther of opinion, that you are not entitled to listen to refined criticisms on the terms of the oath; and far less to listen to any allegations that mere suspicion or conjecture might offer as to what was the real object of such an oath.

It appears to me, however, to be indispensable, that the whole of the oath, from beginning to end, should be taken into consideration. We are to take, not a detached part of this oath here and there, and extract a meaning from it—we are to combine the whole of it, and take it as one single instrument, and put upon it merely a plain, common sense, legitimate meaning, laying aside every thing like refinement in extracting what is its true import.

I feel myself bound, where the oath may be of a doubtful or uncertain nature, to let the doubt lean in favour of the accused; but, on the other hand, if the words be plain, and convey only one meaning to my mind, I am called upon to give effect to that meaning, without paying the slightest regard on the one hand, to its bringing the prisoner within the law; or, on the other, letting him escape, if he was truly guilty of a violation of it.

Keeping these considerations steadily in view, and taking the whole instrument into consideration, I agree with my brother on my right hand, that in looking to what is the true purport or intention of this oath, particular attention must be paid to the solemnity with which it is introduced and concluded. An invocation in the most solemn manner to the Almighty, is the commencement of the oath; and the conclusion is, "So help me God, and keep me steadfast." A more solemn and deliberate call upon God, in entering into an engagement; one which is attended with every thing that can render it awfully impressive on the minds of administrator and taker than this, it is impossible for me to figure to myself for a single moment.

The oath then proceeds, "I will persevere in my endeavours to form a brotherhood of affection amongst Britons of every description, who are considered worthy of confidence." That this brotherhood which the taker of the oath binds himself to persevere in endeavouring to form, can, upon any fair or legitimate principle of interpretation, be supposed to allude to the case of such a brotherhood of affection as was ingeniously put to your lordships at the *viva voce* discussion of this case, appears to me to be negatived by another part of the oath, which refers to the penalty for the disclosure of any thing done by the brotherhood. For these two passages taken together must

satisfy every fair, candid, and impartial mind, that it was the formation of brotherhoods, associations, or bodies of men united together for one common purpose,—not a brotherhood of affection among all mankind in general, or all the people of this country in general, but among those only who are considered *worthy of confidence*. Look to the subsequent part of this oath; to the sanction of secrecy as to the proceedings; the punishment of death to be inflicted by any member or members of such societies; which affords the clearest evidence that there was to be a union of numbers; that these numbers were to be united together in a variety of different societies; and then say if it is possible in common sense, or giving fair play to language, to suppose that a brotherhood, with innocent purposes, was really in view? There is a positive obligation to form an union of individuals, composing different societies, linked together in this solemn and deliberate manner; it is therefore quite impossible to suppose that a brotherhood of affection was alone intended.

The obligation of secrecy, of absolute concealment of every thing that was to be done, of every description whatsoever, in or out of these societies, is a most remarkable feature of this oath; and I have no difficulty in stating, that this has appeared to me, from the very first moment I deliberately considered it, to be one of the fairest and most unexceptionable tests in order to ascertain what is the true purport or intendment of this oath. The words are, “And I do further swear, that neither hopes, fears, rewards, or punishments, shall induce me to inform on, or give evidence against, any member or members, collectively or individually, for any act or expression done or made, in or out, in this or similar societies, under the punishment of death; to be inflicted on me by any member or members of such societies.” Suppose an oath to have been administered, containing in it nothing but what I have now read, and without its having disclosed upon the face of it the object of such secret associations as are here linked together, is there any one of your lordships who would not have pronounced it to be a criminal oath, and inferring a criminal purpose in the view of both administrator and taker? I apprehend that not a shadow of doubt could exist upon the point.

But we are at no loss to discover what was the object this oath contemplated. For, after providing for the formation of this brotherhood, your lordships know in what manner the objects of the union are disclosed in the passage so often read, relative to the engagement to persevere in endeavours to obtain the elective franchise to every person in Great Britain and Ireland, not disqualified by crimes or insanity, and annual parliaments:—“and that I will support the same to the utmost of my power, either by moral or physical strength (or force), as the case may require.” In putting upon these expressions the meaning which fairly

attaches to them, it is impossible for me to bring my mind to the interpretation which has been endeavoured to be impressed upon your lordships—that this engagement to use physical strength, or force, is referable merely to the securing of annual parliaments and universal suffrage after they shall be obtained. It is impossible, upon any principle of construction that I am acquainted with, to put this forced and unnatural meaning upon these words. I, on the contrary, must infer this engagement to mean, that all endeavours, by moral or physical strength, were to be employed to obtain these objects, as the case might require. But even if another construction was adopted, namely, that the above mentioned words were to be held to refer to the whole preceding members of the oath, then, as there is no limitation, no confinement of this co-operation of efforts to any of those which are called innocent proceedings, your lordships must still be left to draw the same conclusion of physical strength, or force, being pledged to be resorted to, as the case might require. It is manifest, on the words of the oath, that the party administering, as well as the party taking it, had their attention most particularly called to the distinction between the two kinds of strength, or force, that are here to be resorted to. This is marked in the most emphatic manner by the words, “*as the case may require*,” the obligation being to use the one, if the case required only that one, but to betake themselves also to the other, if the case should require its aid.

Putting upon these words, then, the only interpretation they can justly bear; holding that there is no room for the innocent construction that has been pressed upon your lordships; and taking into view that the oath binds numbers to the obligation in question; that it is averred that it was administered to great numbers; that various societies were in contemplation; and, above all, that the clause of concealment to which I formerly alluded, has a direct reference, not only to expressions made use of by any member or members, but to acts done by them “in or out of this or similar societies;” the conclusion cannot be avoided, that it was in regard to the endeavours to obtain their objects, that recourse was to be had to moral or physical strength, as the case might require. If there was, therefore, in the preceding parts of the oath, any doubt, any ambiguity, any difficulty whatever, your lordships have it completely removed by this most remarkable and emphatic part of it. Indeed, I well recollect, that the good sense of the senior counsel for the panel, while he was endeavouring to give his view of this part of the case, prevented his grappling with this part of the oath, which he admitted, in unqualified terms (and in so doing he has been followed by the learned counsel who draws the information for the panel), did contain criminal and dangerous matter. But, I apprehend, this most dangerous and criminal part of the engagement,

is that which your lordships may justly resort to as a test for trying the other parts of it, if there does exist any difficulty in regard to their true meaning. This passage of itself goes far to remove any doubt which could exist as to the criminality of this oath. When was it ever heard of, that an obligation to perform only innocent acts, to engage in nothing but lawful proceedings, was enveloped in such terms as we have here; and that the mere performance of the bounden and sacred duty of every member of this association, who might be called upon in a court of law to disclose the truth, was to be followed with the punishment of death? That the obligation must be held to attach even to the persons who should give evidence in courts of justice seems clearly evinced by the words used. A more tremendous obligation can hardly be conceived, than that of binding a person by a solemn oath, not to give evidence as to the proceedings of an association, under the penalty of being murdered by any of its members. That part of the oath alone, therefore, renders it altogether impossible to doubt as to its purport and intendment being of the most criminal nature.

If this be the conclusion which, upon a careful consideration of this oath (and sure I am, no case ever met with more anxious attention) we must come to, the next question is, whether an obligation such as this, to resort to the use of physical strength or force, in endeavouring to obtain annual parliaments and universal suffrage to the subjects of this country, does come up to what the indictment states it to be,—an oath or engagement purporting or intending to bind the taker to commit treason?

I take this opportunity of stating, that the view which I have taken of this case, is the same that it would have been, had this oath been presented to your lordships in the shape which it first assumed. I concur in opinion with lord Pitmilley, that the use of the words physical strength, in the clear and marked manner in which it is manifestly to be employed on the face of this oath, would have been sufficient to satisfy me as to the purport of the oath, independently of the addition of the word *force*. But, at the same time, I agree with my brother on my left hand, that if there be any doubt as to the word strength, it is entirely removed by the word *force* being used promiscuously in one and the same sense.

That universal suffrage and annual parliaments make at present no part of the constitution of this realm (and that they may make no part of it till the end of time, must be the devout wish of every man who has the interest of his country at heart!) is a proposition which cannot be disputed for a single moment. That the obtaining and accomplishing these objects, by the use and application of physical strength or force, by numbers united, and associated together by such an obligation as is now before us; that the effecting, by such means, the establishment of universal suffrage and annual

parliaments, and, consequently, overturning the present constitution of the kingdoms, would clearly amount to high treason, I presume no man breathing can doubt.

That the obtaining of an alteration of law by numbers, and the employment of physical strength and force to accomplish it, does constitute high treason, none of your lordships, or any one acquainted with the law, can hesitate in believing. The authorities on this subject are distinctly brought before your lordships in the information for the public prosecutor, p. 10, 11. You there find cited the authorities of Hale, of Foster, and of lord Mansfield, in announcing the law in the case of lord George Gordon; which authorities have since been referred to by every judge who has had occasion to address a jury in any charge of treason, and their opinions, I will say (although a slight was thrown out as to the weight due to him), have been in a most accurate, satisfactory, and lawyer-like manner, summed up by Mr. Hume. Looking to these authorities, there cannot be the slightest doubt, that to accomplish such objects as we are now considering, by means of numbers and physical strength, would be high treason, as an actual levying of war against the king—in the words of judge Foster, who will be admitted to have given a correct account of the law of treason. That these objects are of a public and general nature, cannot be questioned; and that the accomplishment of objects, which are of that description, and not private, if sought to be brought about by a rising of persons, and the application of force, even without any of the pageantry of war, is high treason, and a levying of war against the king, is the united import of all the authorities which have been referred to; no lawyer having, indeed, ever doubted that the rising of a number of persons for effecting public purposes by force, is high treason and levying war.

As this oath contemplates events to be accomplished—acts not doing or done, but to be committed—which would amount to high treason, I think your lordships, in considering the import of it, are bound to look to the consequences, as demonstrating what it purported or intended to bind to. Having said this, I must take leave to say, that I am not in the slightest degree conscious, that, in holding this opinion, I am about to establish any new treason—that I am giving any countenance to the establishment of constructive treasons—or that I am transgressing any decision of parliament or courts of justice—a hint which has been held out, as if *in terrorem* to your lordships. I am persuaded, that the learned gentlemen who have resorted to this mode of argument, did not purport or intend to make the allusion by way of warning to your lordships, or to convey any thing like a supposed picture of the consequences that are likely to follow from the decision we may be called upon to pronounce: If I were capable of thinking such was the object of the quotations

I allude to, I can only say for myself, that I should have treated them with the scorn and contempt they deserve. Sitting here, in the discharge of a most important and delicate function, I knew the duty I have to perform. I have to perform it according to my conception of the rules of law, and the conviction of my own conscience; and I do so without the slightest regard to those consequences which may be supposed to be alluded to in the passage to which I refer. But I must do the gentlemen the justice to suppose, this was stated without any such view. But having heard it also in the *videlicet* pleadings, I have felt it incumbent on me to make these observations. If any man can persuade me, by sober and legal argument, by a reference to authorities to which I am bound to pay obedience, that the opinion I have formed has a tendency to establish a treason, by ambiguous and general words, "as accroaching of royal power, subverting of fundamental laws, and the like," I would listen to the argument. But I just say, in one word—Let that man show me, upon the authority of any judge or lawyer in England, that what was manifestly intended to be done on the face of this oath—the altering the established laws, and constitution of parliament, by physical strength or force—if accomplished, is not high treason, and I will give the authority obedience.

If such then be the true import of this oath, the question remains for your lordships to determine, whether the public prosecutor, resting his charge on the act of parliament, and subsuming in the minor proposition that the panel is guilty of that charge, by administering this oath to a variety of persons, on various occasions, and at secret meetings—has shaped the indictment in such a manner as to warrant us to remit it to an assize?

This leads to the objections alluded to, that it was the duty of the public prosecutor, to define the treason which he alleges the purport of the oath was to bind to commit; and that the attempt he has made to do so is abortive.

In reference to these objections, if it were at all true, as is stated in the information for the panel, that the prosecutor is here asking to obtain the chance of a verdict from a jury, upon vague inference from facts inapplicable to the nature of the charge, and without fully explaining himself to us or the jury, it would be the duty and instant inclination of your lordships to check such an attempt. You are bound to take care of the interest of the public at large, and of the party accused, by checking such attempts, and finding the charge irrelevant. But the facts of this case, as appearing on the face of the indictment, warrant no such assumption.

I think it necessary to notice, that I cannot concur in one position of my learned friend who drew the information for the prosecutor—that, in a case of this description, we can give any credit to the public prosecutor as to the meaning of the oath, unless we be satisfied

ourselves, upon the face of the oath, that the meaning which he states is correct. If such be his statement, I beg to say I differ from him. In the major proposition of the indictment, reference is had to the act of parliament; and it is for us to say, whether the facts stated in the minor proposition come up to the major proposition.—I see, however, the public prosecutor does not mean to carry his argument to that length.

But, supposing the objects of the parties to the oath were to be prosecuted by levying war, it appears to me, that, in order to make a relevant charge, it is not necessary, on any principle of law, nor is it required by this statute, that the public prosecutor should enter into a definition of the precise treason which he avers the oath purported or intended to bind the parties to commit. I say so, under this qualification, that he must aver and show, on the face of the oath, that it purports or intends to bind to commit treason.

I cannot enter into the idea, that, to found a legal charge under this act, which refers to three distinct species of oaths, binding to commit any treason or murder, or any felony punishable with death, it would be sufficient to narrate the act, and not say whether the oath bound to commit some particular one or other of these species of crimes. I am for the prisoner, as to this point; and I think, on the principle of fair dealing, the species of oath imputed to him, should be distinctly stated. But, having arrived at that conclusion, I am then to say, whether or not there is any thing in the nature of this act of parliament, and charge that is made under it, which requires the prosecutor to go further. I must beg leave to say, with all deference to the opinion of my brother (lord Gillies), that it is possible to figure cases of oaths upon which charges under this act might accurately be laid, and as to which it is impossible to contend that the public prosecutor is bound to specify and define the treason. I allude to an oath which professes to have in view, any alteration of the law, for instance. If such shall appear to be the object of the oath, and there shall be, on the face of it, words which clearly purport or intend to bind the taker to persevere in the accomplishment of the object by any means whatever, and to persevere even in *reasonable* means if necessary, I contend, that it would be sufficient for a prosecutor to say here is an oath in violation of the statute 52nd of the king, intending to bind the takers to commit treason. I take for granted, that the oath binds to persevere, by the use of all means, not excepting reasonable means. Could any man doubt, here is an oath in violation of the act of parliament? Then I ask, what is the duty the public prosecutor is called on to perform?—To define the treason which the party at that time taking the oath had not at the time himself defined? He had merely bound himself to the performance of treasonable acts, which is a violation of the

act of parliament. In this instance, it is an absolute impossibility to say a correct special definition of the treason could be given. I always say this, under the qualification to which I formerly alluded, that the oath itself shall be one which purports or intends to bind to the commission of treason at least. If it were couched in such language as no mortal could understand, it would be just to hold it not sufficient that the prosecutor thought it bound to commit treason; but if this appears on the face of the oath itself, the charge must be held to be relevantly laid.

I go a little further; for it is not merely in reference to treasonable, but to murderous, and felonious oaths, that this observation would be found strictly to apply. I take the case of an oath, as was put by lord Pitmilly: not that there is an obligation on the face of it, to murder an individual, but to preserve secrecy, and to persevere in endeavouring to accomplish certain objects, and even to put to death all those who should oppose the accomplishment of them. Here is an oath which might be charged as in violation of that part of the act of parliament directed against oaths purporting or intending to bind to commit murder. The prosecutor quotes the oath, which contains such an engagement as I have stated, to persevere, even to the risk of putting to death those who shall oppose the accomplishment of the end in view. If the prosecutor were called on to define the species of murder which this oath purported to bind to commit, would there not be the same impossibility attempted to be imposed as in the case formerly supposed, as to the species of treason? The parties themselves had not designated whom they intended to murder, or the manner of doing so, except generally those who should oppose them; and therefore the public prosecutor could not describe, in the charge, the particular sort of murder, as that does not appear on the face of the oath itself. But, if he narrates the act of parliament, and cites the oath, he does all that is incumbent upon him under this act of parliament. I say the same as to an oath binding to commit felony. Suppose parties (and nothing is more common, I fear, than associations in some parts of the kingdom, of persons to commit felonies), enter into a combination to commit a capital felony, and have resorted to an oath binding themselves to seize on the whole bullion in the coffers of the bank of England, or to possess themselves of the regalia in the Tower of London. The prosecutor discovers such an oath, and libels upon it, as purporting or intending to bind to commit a felony punishable with death. I think, on attending to this act of parliament, and to the circumstances under which such an oath must have been administered or taken, it would not be necessary to specify and define the obligation as one to commit the crime of burglary, or any particular capital felony; and, if such a charge was raised here, it would not be necessary to

state that the objects were to be accomplished by means of theft and house-breaking. It would be sufficient to state, that the act of parliament was violated by such an oath, bearing on the face of it an obligation intending to bind to commit a felony punishable with death. The prosecutor cannot be called on to define more precisely, what it must be impossible for him to do.

If the oath itself bears the construction which is alleged of it, and if the relative circumstances of time, and place of administering, be set forth in the indictment, the prosecutor has done all that is necessary for the advantage of the prisoner. The prisoner suffers no harm from its being stated in the indictment, that it is an oath intending to commit treason, for, if he can shew that such is not the proper construction of the oath, and that it does not so purport, his defence remains entire. That he suffers no hardship from the indictment being so framed, appears to me to be quite clear. An admission was made on the part of the panel at the bar, in clear terms, by Mr. Moncrieff, that this indictment would have been relevant if it had narrated all the different treasons alternatively, as bound by the purport of the oath to be committed by the takers of it. This is a truth of which I have no doubt whatever: But, if so, is it possible to say any benefit would have resulted to the panel from following such a proceeding?

But, it has been said, that, *esto*, it is not incumbent to define the treason in an indictment on this statute; yet the prosecutor has undertaken the task, and has not performed it satisfactorily.—Now, we are all agreed, that, in a trial for treason, the particular species of it must be specifically set forth; but, I conceive, for one, that the present objection for the prisoner proceeds altogether on a mistake, and that there is no such thing, as is alleged, undertaken on the part of the public prosecutor. The passage founded on, is not to be found in that part of the indictment where you would have expected the prosecutor to have made such a charge. The words termed vague and unsatisfactory, are merely expressive of the prosecutor's opinion as to the nature of the oath; I shall not fatigue your lordships by reading that part of the indictment—I refer to it as familiar to all of your lordships. The prosecutor goes on to describe the oath as an obligation to obtain annual parliaments and universal suffrage, by physical strength or force, and thereby effecting the subversion of the government, laws, and constitution of this kingdom, by violent and unlawful means. This is clearly descriptive of the oath, not of the treason; for there immediately follows: "Which oath or engagement, or obligation in the form of an oath, was in the following terms." On this part of the case, it is obvious to me, that that which is alleged to have been an imperfect execution of a task undertaken by the public prosecutor, falls entirely to the ground; for the public

prosecutor has not entered into any such undertaking—he disclaims it; and the words of the indictment show he had not pledged himself to any such task. Agreeing, therefore, with the counsel for the panel, that, if this were a trial for treason, those words in the indictment would not be sufficient; I say, the rule requiring a specification of the treason does not apply to the present case, and has not been attempted to be acted upon by the public prosecutor. The case is quite different from that of lord Strafford. Without at all interfering with the law of treason, or asking us to find the indictment relevant, as charging treason, the public prosecutor makes the averment, that the oath here is one purporting or intending to bind to commit treason; and he says it was so by obtaining annual parliaments and universal suffrage by physical strength or force. This is his description of the oath, and we are referred by him to the oath itself; and if we are right in our construction of it, it is an oath purporting or intending to bind to commit treason, because it states that physical strength or force was to be employed in the accomplishment of those objects; which never can be accomplished without producing those consequences which the prosecutor states. Those words of the indictment are no more than the enlarged view the prosecutor gives of the consequences of his averment as to the nature of the oath itself. That they are not descriptive of the means to be employed, is obvious. Neither are they descriptive of the objects in view; for these are annual parliaments and universal suffrage. They are no more than an amplified detail of the evil result of the accomplishment of those objects, which cannot take off the effect of the treasonable nature of the oath. That the words, “and thereby effecting the subversion of the established government, laws, and constitution of this kingdom, by unlawful and violent means,” cannot therefore be viewed as any thing like an attempt to define the treason, is to me quite obvious. Suppose the indictment had specified the treason of levying war, and then these words had followed, “and thereby effecting the subversion of the established government, laws, and constitution of this kingdom, by unlawful and violent means;” will any one maintain, that the addition of these words, which are merely descriptive, could vitiate the rest of the indictment? That view of the import of these words is decisive, that the use of them in this case cannot amount to a vitiation of the charge, or render it in any respect irrelevant.

In all cases of this nature, it is right for the public prosecutor to deal fairly with the accused, and to put him in possession of what he bottoms his charge upon, specifying the time, manner, circumstances, and individuals, with regard to which the guilty acts are said to have been committed. When I look to this indictment, I find all this is done. The

major proposition cites the act of parliament. It is then charged, that the panel was guilty of having administered an oath, the terms of which are set forth; the place, persons, and nature of the meetings at which it was administered are detailed; and the prosecutor, having done this, has done all that can be demanded of him, according to any principles with which I am acquainted for the formation of a criminal charge.

But there does remain another objection which has attracted the attention of all your lordships, as brought under our consideration in an argumentative and learned manner, in a supplementary information for the panel. I have no inclination to find any fault with that course of proceeding; for, it was otherwise impossible to do justice to that argument, because it proceeds on the supposition that the other argument had altogether failed. But I have humbly to submit to your lordships a view upon this part of the case, which has not been taken by any of the Court, and which has appeared to me, on a thorough consideration, to be deserving of great attention. For, independently, altogether, of the weight of the answers which have been made to the preliminary objections, it is obvious that Mr. Grant's argument is bottomed on assuming this fact, that the administration of the oath itself, now before your lordships, does amount to an overt act of treason under the statute 36th of the king; that is an overt act of that particular treason of compassing or imagining to levy war for the purpose either of compelling the king to change his measures, or to over-awe either House of Parliament; and that administering to numbers at secret meetings such an oath, is to be held as a substantive overt act of this particular treason. Before I can, however, arrive at this conclusion, it must be made out to me, in a more satisfactory way than has hitherto been done, that, by giving my sanction to this assumption, I am not, in fact, proceeding to establish a constructive treason. Your lordships will perceive that what I allude to is this, that it is indispensably necessary, to the permitting such an oath as this to be received as an overt act of the particular treason to which I have referred, under the statute 36th of the king, that the conspiracy, the compassing, imagining, and devising to levy the war should be matured and specially directed to the levying of war, at a certain time, and at a certain place, and for a certain special purpose, such as the objects stated in this case—the obtaining annual parliaments and universal suffrage, or any alteration of the law. This to me is clear from the principles we find applied to the statute of Edward 3rd; that, before any particular fact shall be founded on as an overt act of a compassing and imagining the death of the king, or levying war, it is necessary to make out satisfactorily that there was such a conspiracy devised and matured. This is a clear principle in the law of treason, and

I shall be the last man to interfere with it. To make his argument on this point apply to the present case—to entitle him to raise the question, whether we can in this way try what is in itself a treason, it is incumbent on the panel at the bar to assume it as proved, that there was this matured, specified, fixed, and deliberate conspiracy and plan formed to levy war. This he must assume, before he can avail himself of the argument which his counsel has suggested. It is material, however, to observe, that the indictment does not state this to be the fact; and I ask, whether there is any one of your lordships, upon the principle which has been so strongly impressed upon you by lord Gillies, who can take this important fact for granted? I, for one, am not prepared to do so. In my conscience I am bound to say, that, though there appears on the shewing of the indictment to have been in contemplation, that which, if accomplished, would have amounted to high treason, I must give the parties credit in believing, that there was not a digested, specific, deliberate, fixed plan for a rising. And, having that clear opinion, and having seen nothing to shake it, the whole basis of the argument in this part of the case falls to pieces, and there remains no foundation for stating, that you have here an oath founded on in support of a charge of a capital felony which is itself an overt act of high treason.

The object of the statute of the 52nd of the king, was to guard against the state of subversion and subjection of men's mind to the influence of leaders, some of whom were even concealed from the persons who were concerned, both in taking and administering these oaths. It was to prevent the consequences of such dangerous influence over the minds of the people, and of their blind submission to these leaders. It contemplates, therefore, the cases of prospective conspiracies not yet matured, not brought into the shape of actual concert of rising into rebellion. It was to guard against those evils that the act was framed. It has a reference to what is to be committed, not to what is committed. If this be a correct view of the true intent of the act in question, that it was made to prevent the creation of such undue influence, and the subjection which seems to have been the object of the administrators in regard to those who took the oath; then it follows, that it is relevant, in forming a charge under this act, for the public prosecutor to set forth that this is an oath purporting or intending to bind to commit treason, in violation of the act of parliament. But, being of opinion, that it has not been made out in a clear and satisfactory manner, that the administering of this oath, as charged in the indictment, is an overt act of the nature taken for granted in Mr. Grant's argument, I have here nothing to do with the proposition that felony merges in treason, even if there were no such clause as the last one of the statute in question.

As to the doctrine in general, that, without precedent, case, or opinion of any lawyer of authority, it is to be held at once and decided in this case, that, by the act of queen Anne, which renders the law of treason the same in both countries, we have imported the whole principles of the common law of England in reference to such a crime, it is a proposition to which I am not prepared to accede. Your lordships have already seen one marked distinction between the systems of the law of the two countries, which renders it impossible to hold, that the whole law of England has become a part of the common law of Scotland. I should have wished to have heard any authority given to your lordships, from which it could possibly be held that any judges who ever sat in this Court, could permit any man who has been sent to an assize on a charge of crime founded on an allegation of certain facts, to be remitted on the same facts to another assize, to be tried for a crime of higher denomination, without the express authority of parliament? I never can go any such length. This is one feature in our law which must show that we have not yet embodied into it the rules of the common law of England. It is clear, from Foster, that, if in the course of an investigation, as to a trial for felony, he, as a judge, should discover treason, he would discharge the jury, and direct a new indictment for treason to be raised. Such proceeding is, however, impossible, according to the law of Scotland. No instance of it has been produced to your lordships—no authorities have been founded on to establish such a rule; and I am certainly not prepared to adopt it here. If I understand the principle, it goes to the length that a judge should discharge the jury, whether they were about to convict or acquit the panel. That we should adopt so extraordinary a rule, without authority, is out of all sight; and, at present, I can only say, that I entertain the greatest doubts of the doctrine of felony merging in treason, being applicable in this Court.

I am happy, however, to think, that from the view I have taken of the act of parliament, and the oath in question, there are on the face of this statute, the most invincible grounds for holding that the indictment which has been preferred ought to be remitted to a jury, and that we are, in fact, left no discretion by the legislature itself. The clause upon which this part of the case is rested, I need not again read; but I think it necessary just to advert to one circumstance which was strongly pressed, and seems to have had great effect upon the opinion of my brother, lord Gillies. I refer to the course of procedure which parliament is supposed to adopt, when it makes any deviation from former statutes, as is supposed to have happened in this case. The statute alluded to, was the 39th and 40th of the king. Mr. Grant, after referring to the statute 9 Geo. 1st, goes on to state, that it was not thought, that by this act, the shooting at the king could be prosecuted as felony. He goes on to recite

certain parts of the 39th and 40th of the king, and then calls your attention to the express statement in the latter part of the act; "that none of the provisions contained in the several acts of the 7th year of king William 3rd, and the 7th of queen Anne, respectively, touching trials in cases of treason, &c. shall extend to any indictment of high treason, in compassing, &c. where the overt act shall be such as aforesaid; but, upon conviction, judgment shall nevertheless be given, and execution done, as in other cases of high treason, any law, statute, or usage to the contrary notwithstanding." This reference to this particular statute led me to look to the act itself; and, I think, when your lordships attend to its terms, you will find there the clearest and most invincible reasons for those particular clauses being inserted in it. What is the title of the act? "An act for regulating trials for high treason, and misprision of treason in certain cases." It then proceeds to enact what is stated in the panel's information, and concludes with providing, that nothing in the acts touching trials for high treason, &c. shall affect that statute, because there is a new mode of trial prescribed; and that wherever the charge is, that of compassing and imagining the death of the king (the most detestable of all treasons), and the overt act, the actually shooting at him, &c. it shall be lawful and competent to proceed to try those guilty of that offence *as for murder*, and on the same evidence as in trials for murder. Such is the object of the act of parliament. That, however, clearly, was not to do away the crime of high treason and make it a felony, but to regulate the mode in which such acts of high treason might be tried; and the enactment is, that they shall be tried according to the form of trials for murder, and upon the same kind of evidence. Seeing this was a new regulation for the trial of what was actually high treason, was it not necessary, having made this new provision, to declare, that nothing contained in the two former statutes, with regard to trials for high treason, should be construed to extend to this act of parliament? This was the only course which could be followed, when a new regulation was to be made for the highest species of high treason. The whole weight and effect of this authority, therefore, is done away, upon looking to the act itself and its true object, which was to make a new system of trial for certain acts of treason. Such being the true object of the statute 39th and 40th of the king, it was necessary to subjoin that part of the clause which has been founded on, as so decisive in this case.

There is another view that may be taken of this act which appears to me to afford an unanswerable reply to the statement made on the part of the panel, as to its being absurd and incredible to suppose that the legislature, in passing the statute 52nd of the king, could have contemplated the possibility of declaring that to be a capital felony which amounts to

high treason. That act, 39th and 40th of the king, was passed, in order to regulate, as I have just said, the trial of the highest degree of treason which it is possible for a subject to commit. It enacts, that where the overt act shall be even the actual assassination of the king, the trial shall nevertheless proceed in the same manner, in every respect, and upon the like evidence, as in trials for murder. The act then inserts the clause founded on by Mr. Grant, and concludes with declaring, "Judgment shall, nevertheless, be given, and execution done, as in other cases of high treason, any law, statute, or usage, to the contrary notwithstanding." What, then, has the legislature here done? It has declared, that, in reference to this, the highest and most aggravated species of treason, all the privileges of treason-trial shall for ever be taken from the subject, and that he shall not have the usual benefit attending trial for treason. Where the overt act charged is the assassination of the king, the accused may be tried as for a common murder, and be convicted upon the same evidence as in a trial for murder. Here is a declaration of the legislature in regard to the highest species of treason; and yet it was pressed upon your lordships, as the most incredible and absurd of all propositions, that in reference to other treasons, as well as to this, the legislature should ever have intended to declare, that certain oaths, purporting or intending to bind to commit treason, should be declared a capital felony and liable to punishment as such; and that there would be the utmost danger to the subjects of this country, and to the person of the king himself, by the adoption of any such construction as is here contended for on the part of the prosecutor. This very act, founded upon by the panel, affords, however, a satisfactory proof, that, whenever the legislature thinks it necessary to make an alteration of the law as to treason, it does so without hesitation, if it thinks such alteration is for the benefit of the public at large; and we see that it accordingly provides, not only that the cases of treasonable oaths and prospective treasons, but of overt acts of the highest kind of treason themselves, may be tried as capital felonies.

But the clause in the 52nd of the king leaves no doubt as to the conclusion we ought to draw. Admitting the correctness of Mr. Grant's statement as to felony merging in treason, I say there is an authority before your lordships to which we must bend, and as to which we have no discretion. It is said to be an ambiguous clause, but we are bound to give a meaning to it: and I think it has declared expressly, that a fact, or an offence, which may be charged in violation of this act of parliament, may be charged as an act of high treason; under this qualification, however, that the accused has not been brought to trial before for the lesser offence. I cannot hesitate, or doubt, that the English lawyers who drew this act of parliament, must have had in view the

possibility of oaths being administered, which, in certain circumstances, might amount to high treason; for they must have had before them the statute 36th of the king, as well as that of Edward 3rd.

Having submitted to your lordships those observations, at perhaps too great a length (but in justice to the panel at the bar, to the law of the country, and in discharge of my duty, I wished to deliver my opinion fully and explicitly), I have no difficulty in saying, that, upon attending to every thing that has been urged with so much ability for the panel, I have no alternative but to find this indictment relevant, and remit it to an assize.

There will, no doubt, remain an important and sacred duty to the jury to perform, and which they will discharge, I have no doubt, as uprightly and carefully as we have endeavoured to perform ours. They will have to take the whole case into consideration, and make up their minds upon the oath, as the Court has done, and will have to say whether the panel, if concerned in administering it, is guilty of the crime laid to his charge. It is possible the jury may differ from us as to the import of the oath, but I feel that as a difficulty of no magnitude in the case. There are many cases where we are bound to give our opinions to juries on the subjects upon which they have to return verdicts; and I should be the last man to wish that they should feel themselves in the least degree fettered in their judgment by our opinions. It is my duty, after stating the facts of a case, to explain my view of the law, and frequently to pronounce my opinion as to the import of the facts, after they are disclosed in evidence. In a late trial for sedition, I was called upon to state that there was sedition upon the face of the speech, in that case; but I, at the same time, told the jury that they were to make up their minds upon that point, and decide for themselves. Suppose the jury had found for the panel in that case, should I have felt any uneasiness? Being confident that I had done my own duty, I should have given them credit for uprightness and integrity in the discharge of theirs. Having performed my duty, to the best of my abilities, I care nothing, in any case, for the consequences.

“The Lord Justice Clerk, and Lords Commissioners of Justiciary, having considered the criminal indictment raised and pursued at the instance of his majesty's advocate, for his majesty's interest, against Andrew M'Kinley, panel, with the informations given in for the prosecutor and panel in terms of the order of Court, dated the 23rd day of June last, and before recorded, and the supplementary information given in for the said Andrew M'Kinley, also before recorded; they repel the objections stated to the relevancy of the indictment: And the indictment relevant to infer the pains of law specified

in the act of parliament libelled on; but allow the panel to prove all facts and circumstances that may tend to exculpate him, or alleviate his guilt, and remit the panel with the indictment as found relevant to the knowledge of an assize.

“D. BOYLE, I. P. D.”

Lord Advocate.—To morrow is Saturday. Although I do not anticipate a very long trial; yet, to avoid unnecessary discussion to morrow, which might eventually lead to an encroachment upon the next day, I wish to know now if any ground for further delay is to be stated; and what witnesses are to be examined for the panel.

Mr. Grant.—The agent for the panel informs me that the witnesses are not all come forward.

Lord Justice Clerk.—An application was made to the Court, on the part of the panel, to know whether, supposing the relevancy of the indictment to be sustained, we should proceed next day with the trial? and we stated, that, in that event (as to which, however, we could anticipate nothing), we should be prepared to proceed.

Lord Advocate.—I am entitled to have a list of their witnesses the day before the trial. Trusting, however, to receiving this list and the defences (which have not yet been lodged) in the course of the evening; and to there being no discussion on any of these preliminary points in the morning, I should still beg leave to suggest that your lordships should not meet later than nine o'clock.

Lord Justice Clerk.—Gentlemen of the jury, I have to repeat that the Court regrets extremely this case has been productive of so much trouble to you. This has been from no fault of the Court; and, I trust, you will not grudge giving yourselves a little further trouble in a case of such importance to the panel and to the country.

“The Lord Justice Clerk, and Lords Commissioners of Justiciary, continue the diet against the panel, and whole other diets of Court till to morrow morning, at nine o'clock, in this place; and ordain all concerned then to attend, under the pains of law; and the panel, in the mean time, to be carried back to the castle of Edinburgh.”

HIGH COURT OF JUSTICIARY.

JULY 19, 1817.

Present.

Rt. Hon. David Boyle, Lord Justice Clerk.
Lord Hermand.
Lord Gillies.
Lord Pitmilley.
Lord Reston.

Counsel for the Crown.

RA. Hon. Alexander Macdonochie, of Meadowbank, His Majesty's Advocate [afterwards a lord of Session and Justiciary, with the title of Lord Meadowbank.]

James Wedderburn, Esq. Solicitor-General.

H. Home Drummond, Esq. Advocate-Depute.

Counsel for the Panel.

John Clerk, Esq.

Geo. Cranston, Esq.

Thos. Thomson, Esq.

Francis Jeffrey, Esq.

J. P. Grant, Esq.

J. A. Murray, Esq.

James Moncrieff, Esq.

Henry Cockburn, Esq.

Andrew M^r Kintley was placed at the bar.

Lord Advocate.—Before a jury is impaneled in this case, I think it right to state to your lordships, that one object which I had in view in laying this indictment upon the statute upon which it is founded, has been accomplished. Your lordships by your decision yesterday, have promulgated to the people of this country, that the offence with which the panel is charged, is one of the most aggravated descriptions, and that the lives of the guilty are forfeited to the law. I trust most sincerely, that your lordships, by this judgment, have opposed a barrier against the commission of this offence in future, and thereby put a final stop to a crime so utterly subversive of the public tranquillity.

In this reliance, and considering all the circumstances of the case, as well as yielding, I hope not improperly, to the dictates of my own feeling, I trust that I am doing what will not meet with the disapprobation of your lordships, when I state that I mean to restrict this indictment to infer merely an arbitrary punishment.

At the time that I do so, I trust I shall be permitted by your lordships to make a single observation on some of the pleadings for the prisoners, in which, I apprehend, I have been brought more personally forward than is usual in the pleadings of this court. I regret the circumstance, not on my own account, because I can receive such insinuations as they merit, trusting that a conscientious discharge of my duty will sufficiently protect me against them, however injurious they may be; but I sincerely regret that my learned friends on the opposite side of the bar should have advisedly insinuated that I have been guided by "an over-heated zeal," by "a desire to take away the life of the panel upon undigested notions which I could not define." And yet these, and many other insinuations of a similar nature, have been made in the broadest manner against me, which, I must be allowed to think, it would have been in better taste had my learned friends thought proper to avoid.

In like manner, it seems most strange, that, without any object in which their clients can have an interest (or rather the interest which they have lies directly the other way), and when by the form of pleading, I had no means to refute it, a proposition has been maintained by the learned gentlemen, utterly unfounded in law, and which never was heard of till it appeared in this information. The doctrine I allude to is, that the remedies of the statute 1701 are not competent to a prisoner incarcerated upon a charge of treason. This doctrine, I say, never was before maintained. It is utterly unfounded, and in opposition as well to the terms of the statute itself, as to the concurrent testimonies of all the lawyers both of England and Scotland, since the Revolution. For the same statutes that have suspended the writ of habeas corpus in matters of treason, have also suspended the operation of the act 1701, in the case of persons imprisoned on similar charges, and on these alone.

I hope it will not be deemed improper that I should thus have repelled what I must hold to be a libel on the law of Scotland, especially when it seems to be so much the fashion to induce it. But I shall trespass no further than by giving in a minute restricting the libel.

Mr. Cranston.—I have just one word to say, in consequence of the address which we have now heard. I confess I am totally unaware of the allusions in either the verbal or printed pleadings, with regard to which his lordship has now addressed the Court. In so far as I was concerned, I had no intention to reflect upon him.

Lord Advocate.—I do not allude to you, and I refer chiefly to the printed proceedings.

Mr. Cranston.—I believe I may say the same thing for my learned brethren as for myself. We viewed the indictment in one light, and his lordship did in another; but it never was our intention to make personal imputations upon him.

If there were to be any discussion in this matter, there are some observations in the information for the crown which bear hard upon the counsel for the panel. It is stated in that information, that one of the prisoner's counsel had bestowed a panegyric upon the association of those persons who took the oath founded upon in the indictment,—which is an entire mistake and misrepresentation.

With regard to whether the act 1701 applies to cases of treason, that has not been argued in either the written or verbal pleadings. Perhaps a doubt may have been thrown out on the subject, and all that I can say is, that none of the prisoner's counsel have made up their minds one way or another with regard to it, nor do I know that any judgment has ever been pronounced upon the point. The prisoner has perhaps already run his letters.

I am sorry if any expression has been made use of, that could give displeasure to the lord advocate. No personal imputations whatever were intended against him.

Mr. Grant.—I rather think I am called upon, and in a manner very unusual, to make a few observations; and it is by dint of recollection of two words which the lord advocate employed, that I think it is the last paragraph of the second information for the prisoner, which was written by me, that has excited his lordship's animadversions. I do not know that I am very strictly in order before you at present; all I can say is, that this paragraph runs in these words: "According to the construction which the prosecutor would put on the intension of the legislature in passing the statute on which he has laid the present indictment, he would impute to the legislature this inconceivable injustice and absurdity, that on the one hand the highest and most dangerous species of treason, implying a meditated attack on the life of the sovereign, sanctioned by the solemnity of an oath, and extending as is alleged in this case, to a conspiracy of hundreds or thousands of persons, threatening, as is here also alleged, to effect the subversion of the established government, laws, and constitution of this kingdom, by means which involve the whole nation in bloodshed and in open war, may be tried as a felony, punishable only with transportation; and the indictment, being once preferred, whether by a grand jury in England, or the public prosecutor in Scotland, no remedy remains but the offenders must be for ever discharged by this means, from all further consequences of their guilt. And, on the other hand, by the contrivance of the officers of the crown, the subjects of this country may be brought to trial, and placed in hazard of their lives on a state prosecution, with the whole weight and influence of government to oppose them. The overheated zeal of its officers excited, perhaps their interest and reputation at stake on the issue, as well as the passions of the factious, the terrors of the timid"—The passage being written in the heat of the last paragraph, the terms, perhaps, are not so eloquent as they are numerous. It goes on,—"the just indignation of the well-affected against crimes involving the common safety, overpowering the natural disposition to clemency and deliberation, all combining to deprive the accused of the security which, in ordinary cases, they possess for a fair and impartial trial, while they are, at the same time, stripped of the safeguard which it has been the ceaseless endeavour of the law of England, from the most ancient times, even in the midst of tyranny and disorder, to provide for the protection of the subject against that oppression and that danger to which it has always felt and acknowledged him to be in those circumstances exposed. The prisoner will

only add, that to put such a construction upon these acts of parliament would not be to expound the laws, but to libel those who made them. At your lordships' hands he is certain there is no danger of their receiving such a construction, equally disposed as you feel; at once to protect the subject from oppression, and to vindicate the necessary justice of the country." The lord advocate hints that he individually is accused of overheated zeal, and that the paragraph is directed against his lordship. I beg to assure the learned lord that no such view occurred to me, and that what I stated I intended as a general proposition, without particular application to any individual.

Lord Advocate.—I am quite satisfied, in so far as I am personally concerned, and I am exceedingly glad that I mentioned what occurred to me upon the subject.

Lord Justice Clerk.—I am pleased to see the introduction of right understanding and harmony, which I trust will be maintained throughout the trial.

The following minute was then read:—

"His majesty's advocate represented that one of the objects which he had in view in laying the present indictment for a capital punishment having now been accomplished by the judgment of the Court sustaining the relevancy, he now restricted, and hereby restricts the indictment and the pains of law to an arbitrary punishment."

(Signed) ALEX. MACDONALD.

The following persons were then named as Jurymen:

David Gray, of Snipe.
James Mutter, farmer, Longside.
David Thomson, farmer, Wester Cowden.
John Anderson, of Whitburgh.
James Wilson, farmer, Bolton.
William Wilkie, of Magdalens.
John Thomson, farmer, Inneravon.
James M'Kenzie, goldsmith, Edinburgh.
Robert Green, watch-maker there.
Patrick Main, painter there.
Thomas Edmonstone, ironmonger there.
Archibald M'Dowall, merchant in Leith.
James Ogilvie, wine merchant there.
Robert Strachan, merchant there.
Robert Brunton, merchant there.

Lord Advocate.—The witnesses who are designed as prisoners in the Castle of Edinburgh, were confined separately, and I directed that when brought down they should be kept in separate apartments.

Lord Justice Clerk.—The rest of the gentlemen who had been summoned as jurymen will consider themselves as discharged, and the Court has to express its regret that they have been put to so much trouble, and probably expense, in consequence of their attendance

for this trial. They must be aware that this did not originate from any fault of ours; and the duty for which they were summoned being a public and an important one, and the delay that has taken place unavoidable, I trust that they will the less regret the inconvenience which they have suffered.

Mr. Jeffrey.—As the persons we may find it necessary to adduce as evidence on the part of the prisoner include those cited on the part of the crown, and as it has been impossible for us to get access in order to cite those who are in custody, the lord advocate will not object that we should cite them when they come into Court.

Lord Advocate.—Certainly not; I can have no objections.

Mr. Jeffrey.—I observe that my learned friend, Mr. Hamilton, and others who are cited as witnesses for the public prosecutor, are in the Court. I should object to their remaining in Court. The official gentlemen are, of course, above all suspicion; but I wish they should not be present till they are examined. Let them withdraw from Court, and such of them as are cited for us will leave word where they may be found.

Court.—They may go into the Robing-room.

Mr. Jeffrey.—I observe Mr. Salmond present, who was cited some time ago as a witness on the part of the prisoner; and I state generally, that circumstances may occur in the course of the trial which may render it necessary for us to examine that gentleman, and these may appear to the Court of a nature which might render it improper that Mr. Salmond should have been present. He is not a Crown agent; he is in an official situation at Glasgow. We could not prevent Mr. Warrender, perhaps, from being present throughout the trial; but we have it in our power to say to our witness, Mr. Salmond, who belongs rather to the other party, that he shall not hold intercourse with the prosecutor.

Lord Advocate.—I beg to state, that Mr. Salmond is crown agent in this prosecution. I have received great benefit from Mr. Warrender's assistance in this, as I do in every case; but the fact is, that the person who has conducted the present proceedings is Mr. Salmond, who is, in law, one of the officers of the crown in the inferior Court. He has taken the management of these cases from the beginning; and you might as well direct any other person conducting the trial on the part of the crown to withdraw as that gentleman. I have no objections that he be examined by the other party; but as he has been employed as agent, and is now acting as agent in this trial, I object, therefore, to his being excluded from Court.

Lord Justice Clerk.—In a case of this particular description, where the prisoner's counsel

states, that certain evidence, that may be of advantage to the panel, may be expected from this procurator-fiscal of Glasgow, Mr. Salmond, the panel has a right to insist he should be excluded if he thinks his presence would be disadvantageous to him. Mr. Warrender is in a different situation—he could say, here I am in my place, and you might as well remove any members of the Court as myself.

Lord Hermand.—Could Mr. Salmond be examined now?

Mr. Jeffrey.—He is cited as a witness for the prisoner, and can only be examined when the prisoner comes to examine witnesses in defence.

Lord Advocate.—Mr. Warrender has never been recognised by the Court as Crown agent. Your lordship's predecessors have uniformly refused to acknowledge any such person. He is no public officer. The procurator-fiscal is a crown officer.

Lord Justice Clerk.—Mr. Warrender is perfectly well known to be crown agent.

Lord Gillies.—The rule is general, and there can be no exceptions.

Lord Advocate.—I submit to the Court, that there is, at this moment, nothing offered to be proved by the prisoner's counsel by the evidence of Mr. Salmond, to lead the Court to deprive me of his services. There is nothing but a broad averment that his evidence may perhaps be necessary. What they propose is beyond what has been done in any case; and, at all events, they should state what they mean to prove by his evidence.

Lord Justice Clerk.—They say he is a necessary witness for the defence. I think it proper to remark, that Mr. Salmond, as procurator-fiscal at Glasgow, would be considered as Crown agent at the Circuits there; but, Mr. Warrender is Crown agent here, and not Mr. Salmond.—Call the witnesses.

Lord Advocate.—As the witnesses have not yet arrived from the Castle, I suppose there will be no objection to the declarations of the panel being now read.

Court.—There is no objection to this being done.

Mr. Drummond.—Call Mr. Hamilton. We shall first prove the declarations of the prisoner emitted before the sheriff of Lanarkshire.

Mr. Jeffrey.—In order to save the time of the Court, we admit the declarations.

Court.—Give in a minute to that effect.

Lord Hermand.—I should wish to consider a little more the objection as to Mr. Salmond being present in Court. With consent of the panel he might remain in Court. It is admitted, that Mr. Warrender, as Crown agent, could not be inclosed. Now, Mr. Salmond

acts as Crown agent on this occasion; and I doubt whether he can be inclosed.

I should be sorry to do any thing against the panel; but let his counsel state more explicitly their reasons for wishing Mr. Salmond to be excluded. I suppose the panel as an agent here; if the crown counsel were to say he must be inclosed (by which the panel's defence might be prevented from being made out), could that be listened to?

Lord Gillies.—I thought the matter had been disposed of.

Lord Justice Clerk.—When a witness is cited for both pursuer and defender, he is sometimes allowed to be examined for the defender immediately after his examination for the pursuer. And the question here is, Can Mr. Salmond be now examined for the panel?

Mr. Jeffrey.—Without prejudicing our defence most materially, we could not examine Mr. Salmond now. The necessity we may be under of examining him at all is but contingent, and depends on a certain part of the proof, if brought out on the part of the Crown.

Lord Pitmilley.—If the counsel for the panel had consented, it would have been very well to have allowed Mr. Salmond to remain in Court; but, as Mr. Jeffrey says, this might be prejudicial to the defence, it cannot be admitted.

Mr. Jeffrey gave in the following minute:—

“The counsel for the panel admits that the declarations of the panel libelled on, were emitted by him voluntarily and freely, of the respective dates they bear, and that the panel was then sober and in his sound senses.”

(Signed)

F. JEFFREY.

The following Declarations were then read by the Clerk of Court:

FIRST DECLARATION

OF

ANDREW M'KINLEY.

At Glasgow, the 28th day of February, 1817 years—In presence of Robert Hamilton, Esq. Advocate, Sheriff-depute of Lanarkshire; and in the petition and complaint presented by, and at the instance of, George Salmond, Writer in Glasgow, Procurator-fiscal of the Lower Ward of Lanarkshire for the public interest,

Compeared Andrew M'Kinley, present prisoner in the tolbooth of Glasgow, who being judicially examined and interrogated, declares, That he is a native of Ireland; is from the county of Armagh; came over to this country in the year 1799; was bred, and has since followed after the trade of a weaver; is married; has seven children, and his wife is near her delivery of another: That the de-

clarant subscribed the Calton reform petition, but the declarant cannot say what became of that petition, or whether or not there was a committee appointed to forward it: That the declarant has been for the last fourteen years a private in the volunteers and local militia in this place, and he was always very regular on duty. Declares that it never was proposed to him what should be done in case of parliament not granting the prayer of the reform petition; and he never was connected with, or heard of any association or brotherhood, who were to take means for obtaining the desire of the petition by moral or physical force; nor of oaths of secrecy being taken under the punishment of death, not to reveal the proceedings of such associations, or inform on the members thereof, either individually or collectively: That he never had any copy of the Irish rebel oath, and he does not know its terms: Denies that he was ever at any meeting in Niel Munn's, Ingram-street, or in James Robertson's, in the Gallowgate: Declares that he does not particularly recollect where he was on the night of Saturday last was eight days, but he thinks he was in Arthur Armour's, taylor in Bridgegate-street, and different other places, looking for a coat to one of his children, but he cannot be certain that this was the case: That he cannot say positively whether he saw that night John Buchanan, Andrew Sommerville, James Robertson, Hugh Dickson, Peter Gibson, James Hood, James Finlayson, or Hugh Cochran, who were taken up with him on Saturday last in Hunter's, in the Old Wynd of Glasgow: That on the last Saturday evening, the declarant called at Hunter's house, and told the mistress that he wanted a room, and he and John Campbell who was with him, were shown into one; but as the declarant's feet were wet, she soon afterwards showed them into another one, where there was a fire: That this might be about six o'clock, and they were soon after joined by some others who Mrs. Hunter showed into the room, but what they wanted the declarant cannot say, for he left the room soon after he went in, and went away in quest of the coat for his boy, and he did not return till about ten minutes before the Sheriff and party came into Hunter's, and apprehended them all: That the declarant knows of no other motive which could induce these people to have met at Hunter's, than that of providing funds for enabling them to carry on the case relative to the poor's rates, or cause M'Innes against the barony Kirk-session at Glasgow: Denies that he was at Carmunnock on any occasion lately, and especially that he was there with Mr. James Finlayson, junior, and had a conversation with David Dryburgh,

the schoolmaster in that place: That when he was apprehended in Hunter's as above-declared to, he called himself Andrew Brotherstone; but this was done from no ill intent, and merely to prevent, in case of his being detained, the landlord of his house, to whom he owes the last three half years' rent, attaching his furniture, and exposing his family; but though he heard Peter Gibson, another who was then taken up, call himself John M'Kinley, yet he is not acquainted with his motives for doing so: That the declarant never was at Cambuslang, and he does not know rightly where that place is. In witness whereof, &c.

(Signed) ANDREW M'KINLEY.
R. HAMILTON.

MATTHEW BURNS, witness.

JAMES THOMSON, witness.

SECOND DECLARATION

OF

ANDREW M'KINLEY.

At Glasgow, the 4th March, 1817,

Compeared Andrew M'Kinley, present prisoner in the Tolbooth of Glasgow, who, being examined and interrogated, and his declaration of the 28th ult. being read over to him, Declares and admits, that he was present at the several meetings held in Niel Munn's, in the beginning of the year; in Fyfe's, Wilson-street, on two occasions, some time afterwards, and in Robertson's, Gallowgate-street, on Saturday night, the 15th ult. That he was also present at a meeting which took place in one Leggat's, corner of Centre-street, Tradeston, on the first day of the year. That the objects of these several meetings he cannot rightly describe, a desultory conversation having generally taken place, partly about the reform petition, and partly about the poor's rates. That his reason for denying, on his former examination, that he attended these meetings was, that he was averse to bring the keepers of these houses into trouble, or expose them so as they might be deprived of their licence. That he knows two or three of the people whose names are subscribed to the paper which is marked as relative hereto, viz. James Turner, tobacconist, Alexander Kennedy, change-keeper, Bogie, John Ogilvie, Robert Kerr, manufacturer, and Alexander Richmond: That he knows these people, some of them merely as members of the reform committee: That he also knows Lang the printer, having called on him about handbills connected with the Calton reform petition; and with this addition, he adheres to his former declaration.

(Signed) ANDREW M'KINLEY.
DAN. HAMILTON.

JOSEPH REID, witness.

JOHN LESLIE, witness.

THIRD DECLARATION

OF

ANDREW M'KINLEY.

At Glasgow, the 5th March, 1817,

Compeared Andrew M'Kinley, present prisoner in the Tolbooth at Glasgow, who, being examined and interrogated, and his declarations emitted on the 28th of Feb. last, and yesterday, being read over to him, he adheres thereto, with this variation, that he was at Carmunnock with James Finlayson, about a fortnight ago, and was with David Dryburgh in his own house there: Declares, that he knew nothing of Dryburgh before, and that Finlayson took him there, having raised him out of his bed, in Calton, that morning on purpose: Declares, that the first time he saw Finlayson, was either in Robertson's, or the Gallowgate: That his first particular acquaintance of him, was at Robertson's, where they met about the barony process; and Finlayson said at that meeting, that he thought that a just cause; and wished well to it; and the declarant does not know what else could have brought Finlayson to that meeting; and the purpose of the meeting was to consider how they might raise funds to carry on the process: Declares, that he did not use the name of James Black, nor did any one else, to his knowledge, to obtain admission to that meeting: Declares that there was no discussion at that meeting, or at Hunter's, about annual parliaments and universal suffrage. Interrogated, Declares, that he did not know for what purpose Finlayson wished to go out to Carmunnock, nor why he wished the declarant to go with him: Declares, that he thought his health would be better of the air, and that he had some conversation with Dryburgh about work, which was also an object he had for going there: Declares, that he had no conversation with Dryburgh about initiating people into any secret association, nor had Finlayson to his knowledge: Declares, that besides the meetings above-mentioned at Hunter's and Robertson's, he was present at another in Robertson's, and one in Munn's, as formerly mentioned: Declares, that the object of all those meetings was the same; and it was the declarant's opinion that trade would have been better, if they could have succeeded in that process, as the poor's-rates would make the gentlemen exert themselves: Declares, that any person might come into those meetings who had an interest in that process: That the meetings were not publicly called, as they could not get the use of the bell, but every one warned another: That the greatest number present never exceeded twenty, and that he

has seen the bell call the people for such a purpose, and not a dozen attend: That he can give no reason why so much greater a number were collected the day they went to Dr. Burns with a petition. Interrogated if he remembers, if M'Lachlaine, Campbell, Dickson, Hood, Buchanan, James Robertson, and Peter Gibson, and Sommerville, were present at some of those meetings, Declares, that he does; and declares positively, that there was no other business at any of those meetings, except what is above-mentioned, and nothing secret of any description. In witness whereof, &c.

(Signed) ANDREW M'KINLEY.
 HUGH KERR.

FOURTH DECLARATION

OF

ANDREW M'KINLEY.

At Glasgow, 11th March, 1817,

In presence of Robert Hamilton, Esq., Sheriff-depute of Lanarkshire, compeared Andrew M'Kinley, present prisoner in the tolbooth of Glasgow, whose declarations emitted on the 28th ult., 4th and 5th current, being read over to him, he adheres thereto, and being further interrogated, declares, that he is acquainted with a Mr. Kerr, a manufacturer, whose place of business used to be in Gibson's-street, in Gallowgate: That Robert Paul and John M'Lachlan, sometime ago, told the declarant one day, they were looking for Mr. Kerr to ask him for money to assist in carrying on the barony session plea, but whether they found him, or got money from him, the declarant cannot tell: That in Leggat's, on 1st January last, there were present the declarant, Hugh Dickson, Peter Gibson, James M'Ewen, John M'Lachlan, William Edgar, and a man from Long Govan, whose name he does not recollect: That a paper which the declarant gave to Edgar was read over to the meeting, but disapproved of: That the tenor of what the declarant so gave Edgar was in substance, that the persons subscribing should bind themselves to keep it a secret among themselves. Whereupon the Sheriff-examinator warned the declarant, as his duty, he said, directed him, that the declarant was not urged to disclose any circumstances which might affect him in his defence, to the very serious criminal charge which was brought against him; and he, therefore, left it entirely to his own discretion to speak further out or not as he thought fit. Whereupon the declarant said, that he was much affected by the distress that his family was in, and he hoped that mercy would be shown him and them, and that he would then state every particular he was acquainted with. But the sheriff

freely and explicitly stated to him, that he could give him no assurance of any kind whatever, and that the declarant must just, therefore, conduct himself as he had already pointed out. The declarant then declared, that he was afraid he had been led into measures which were highly wrong and illegal, and that he never would have thought of any thing of the kind, had they not been broached to him by John M'Lachlan: That John Campbell, he thinks, informed him, that Mr. Kerr above declared to knew of the secret association that was set on foot: That he was to assist it, and do what he could in giving or getting money: That he heard one Johnstone, a weaver in Bridgeton, in a meeting which took place in Fyfe's, Wilson-street, say, that there was a club of honour, of gentlemen, or something of that kind, which was existing in Glasgow, who were friendly to their measures, and that this body was numerous, and had existed for nine months; but upon recollection, declares, that he cannot say whether the word club, was mentioned or not. That some names of such persons may have been mentioned, but he does not now recollect any of them: That at a meeting at Niel Munn's upon the 4th of January, M'Dowal Peat and James M'Ewen proposed and said, that they would go out next day, being Sunday, to David Dryburgh, schoolmaster at Carmunnock, and initiate him into the matter, and M'Ewen said he was sure he was a friend, and that he had been long acquainted with him. And at the next meeting which was held at Robertson's upon the 11th, James M'Ewen and Peat reported to the meeting that they had initiated Dryburgh: Declares, that upon a Wednesday, about four or five weeks ago, as he thinks upon the 12th of February, James Finlayson and he went up to Carmunnock before breakfast to David Dryburgh's. That this was the first time he had seen Dryburgh, and they found him in bed, but he got up and got breakfast for them, and the said David Dryburgh he yesterday saw and recognized in this room. That he immediately found Dryburgh to be an initiated man, and Dryburgh shewed him the copy of the oath of secrecy, or obligation of the initiated, which had been left with him by M'Ewen and Peat, with their names subscribed, and the places where Dryburgh would find them. That the object of Finlayson and him in going to Dryburgh, was to learn what progress he had made in the matter of initiating, and Dryburgh told him that he had given the oath of secrecy to two; and he added, that all the Carmunnock people were friendly, and that it was to no purpose to petition parliament. That when Finlayson and he went to Carmunnock, they first asked Dry-

burgh if he had got a letter from John Buchanan, the person now a prisoner in the Tolbooth of Glasgow, and Dryburgh having said that he had got such a letter, they thereupon began to communicate upon the business they had come upon. That he has spoken to Robert Kerr above declared to in Young's beaming-shop, where he saw him upon some business about webs, and he would know him if he saw him again: Declares, that he knows James M'Tear, who has his school-room in New-street, Calton. That the said James M'Tear, he knows, gave the use of his school-room for the purpose of putting together the petition for reform from the Calton, previous to its being sent away, and he presumes that M'Tear was a friend to that measure, by his having so given the use of his room. That it was talked of, among them, that they would certainly get money from some of these honourable men, as they were called, in and about Glasgow, who were said to be so friendly to them; but he cannot say that any promise of money was actually made, nor can he condescend upon the names of any of these. That at the last meeting at Robertson's Campbell, who used to be saying that he would get money, stated, that he had had a communication with some of the honourable persons above-mentioned, but that none of them would come forward with their assistance but one, and though he did not mention his name, the declarant conjectured that it was Mr. Kerr that he alluded to. That Johnston in Bridgeton, above declared to, he believes is brother to the Johnston who was tried and imprisoned for the weavers' combination. In witness, &c.

(Signed) ANDREW M'KINLEY.
R. HAMILTON.

JOSEPH REID, witness.

MATTHEW BURNS, witness.

FIFTH DECLARATION

OF

ANDREW M'KINLEY.

At Edinburgh, 18th March, 1817.

In presence of the sheriff-substitute of Edinburghshire, compeared Andrew M'Kinley, present prisoner in the Castle of Edinburgh, and the declaration emitted by him before the sheriff-depute of Lanarkshire, at Glasgow, on the 11th day of March current, being read over to him, he declares that said declaration contains the truth, with this exception, that he is certain of some things which in that declaration he only said he supposed. Declares, that he knows that Mr. Kerr promised to get money, or to use his endeavours to get money, in the declarant's presence, on the occasion mentioned in said declaration. That Campbell said it

would take eight or ten pounds, and Kerr said he would endeavour to get that sum. Declares, that after going to Hunter's on the night they were apprehended, the declarant, Finlayson, and Campbell, went out of the meeting to Mr. Kerr's warehouse. That the declarant had never been there before, and he and Finlayson waited a considerable time at the bottom of the stair, while Campbell went up and talked to him. That Campbell then came down for them, and they all went up together, and then the conversation above-mentioned passed about the eight or ten pounds. That Kerr spoke about a paper which he declined shewing at that time; but said, that he would allow Campbell to come in upon the Tuesday following, and take a copy of it. That the declarant understood from what passed, that the paper was some sort of constitution, or rules for the formation of a club or society. Declares, that this paper was to be for the use of the same people who met at Hunter's with the declarant; and Mr. Kerr said that he had this constitution at the time they were in his warehouse. Declares, that John Campbell told the declarant, and Hugh Dickson also told him, that Mr. Kerr was in the knowledge of their meetings. That Campbell asked him if he would come that night, which he declined upon that occasion, saying, he would give them all the instructions in his power, but, being a man in business, it might hurt him if he attended meetings. Declares, that Mr. Kerr certainly must have known the oath that was taken by the people that attended at Hunter's. Declares, that Campbell and Dickson told the declarant that Kerr had been initiated, and certainly they would not have gone to him for money if he had not. Declares, that a fortnight before this, at one of the meetings at Robertson's, when there was a conversation about allowances to delegates for going to Carmunnock and Paisley, three shillings and twopence was allowed to M'Dowal Peat, and M'Ewen, for going to Carmunnock to initiate Dryburgh, but there was a difference of opinion about an allowance for Campbell and John Buchanan for going to Paisley, and Campbell declined taking any money or going to Mr. M'Arthur to obtain five pounds, which Campbell said he was to give him a bill for the loan of, as his going there might be chargeable to the meeting. Declares, that he believes the money would have been got from Mr. Kerr on the Saturday following their apprehension. Interrogated, declares, that he never heard any thing about arms from any person whatever, except James Robertson, saying, that he had heard that there were some arms somewhere, which some persons had been keeping since the year 1798, but

Robertson never mentioned the name of any person or place; and the declarant does not believe that he knows of any particular place, and considered what he said to be a mere rumour. Declares, that he does not know the names of any of the persons referred to in the 5th page of the former declaration above-mentioned, and does not know who can tell the names, unless it be Alexander Richmond. Declares, that Campbell told the declarant that Campbell and Buchanan were to attend the meetings, but that they rather wished that Buchanan should not be present, as they did not consider him steady enough. Declares, that he never saw Edgar, except at the meeting at Leggat's, that he knew of, and declares that Edgar was not present at any of the other meetings when the declarant was present, and all this he declares to be truth. In witness, &c.

(Signed) ANDREW McKINLAY.
 JAMES WILSON.

ARCHB. SCOTT.
JAMES CURRIE.

Mr. Drummond.—Macer, call John Campbell.

Mr. Jeffrey.—This is one of the witnesses who is described in the indictment by no other designation than as present prisoner in the castle of Edinburgh; and we think it right to state to the court, that this is not a designation sufficient for the information of the prisoner, and that circumstances have concurred with the fact of his being a prisoner there, which entitle us to object to his being received as a witness at all. The fact is, and we can establish it by evidence, that having received only this intimation of the condition or quality of the person served upon as a witness, we took steps to inform ourselves of this individual person, and to make the other necessary inquiries, with a view to which, the law has provided that a list shall be given to the prisoner of the witnesses to be adduced against him at his trial; but we were obstructed entirely in the prosecution of these inquiries, and were prevented from receiving any sort of benefit or advantage from that list of witnesses as to this person. We are ready to instruct, that this person was not in that custody in which persons adduced as witnesses in this court, and designed as prisoners, are usually found. We could only get access to this witness by applying to military authority; and, in absence of the governor of the castle, we were referred to the fort-major; and on application to him, we were civilly, but peremptorily told, that he had received orders to admit nobody to the prisoner unless by permission of the crown agent. Accordingly, the agent for the prisoner, after receiving this answer, made a regular application to the crown agent, and also to the public prosecutor, his majesty's

advocate, setting forth the facts which I have already stated, that this person was among the list of witnesses designed as prisoners in the castle of Edinburgh; that application had been made for access to the witnesses so designed, in order to learn who they were, and to put such questions as law allows to be put to witnesses, and that application had been made to the fort major, who returned the answer which I have just mentioned. To this application an answer was returned, stating, that, in the circumstances of the case, the lord advocate refused to give access to the prisoners in the castle, and declined giving authority to the agent for the prisoner at the bar, seeing the witnesses mentioned in the list served upon the panel.

This is the shape of the case. We are now brought to your bar by the public prosecutor, who produces against us a witness, as to whom we have not the benefits intended us by the law, which requires a list of witnesses to be served; and although the fact is, that this person's name does stand in the list served upon us, yet, to all intents and purposes, the case is the same as if an individual, of whose name we had never heard, were to be examined against us.

In this court, where such substantial and important interests are concerned, if the serving of a list is accompanied with such acts as prevent us from getting any benefit from it, it is the same thing as if the list had not been served at all; and as it is not a mere matter of form that a list should be served upon a prisoner, but is intended to enable him to prepare for his defence, so, when the public prosecutor holds out a list, and then interrupts all the advantages that could be derived from it, that must be a bar to the examination of the witnesses.

What is the purpose which the law contemplates in providing that a prisoner, charged with a crime, shall have a list served upon him of the witnesses who are to be adduced against him at his trial? First, that he should satisfy himself who the witnesses are. There may be fifty persons of the same name; and it is a fault in the list itself, if it do not contain such a description of the witnesses as to let us discover who the individual is. If, in point of fact, the description has been so deficient as not to enable the prisoner to discover who the witnesses are, it is a sufficient objection to their being examined as witnesses. Now, this witness was shut up in the castle of Edinburgh, and upon making application to the civil and military powers we were denied access to him. You have found that a description of a person as residing in a certain street in Glasgow is not enough; or of a person as following a particular profession in the town; and is it sufficient then to say of a witness, that he is a prisoner in the castle of Edinburgh? It is not a sufficient specification—it is only the beginning of one. What purpose did it serve

to tell us he was in the castle of Edinburgh, if he was not to be exhibited to the prisoner? The prosecutor prevented us from identifying the witness. How can we know who the witness is from any thing yet told us? He is a man shut up in a sealed casket to whom we can have no access. He is still an egg in the shell, and is not to come out until the proper process of incubation be gone through by his majesty's advocate. The public prosecutor has been hatching this evidence in the castle of Edinburgh, and it is not yet disclosed. If we go to the castle, and approach the sentinels to ask admission to the witnesses, they ask, who goes there, and present their muskets to us. We then go to the more civil fort-major, who tells us to go to the crown agent. He refers us to the lord advocate. His lordship declines giving us access. Have I thus any benefit from the intimation of the witness's name in a paper presented a few days before the trial? There are now five men, women, or children, in the castle of Edinburgh who are to be produced as witnesses against the panel, and whom we shall see for the first time when they are produced in the witness's box. For any substantial purpose whatever, do I receive any one part of the benefits intended by law, by the serving of a list of witnesses? I do not know whether, in point of fact, such a person as the witness proposed to be adduced, has been in the castle or not; and I have had no opportunity of inquiring what sort of a person this witness may be.

I offer to establish by evidence what I have stated, that, although we took all the regular means to get access to the witness by repeated, respectful, and earnest applications, they were all resisted by the authority of the public prosecutor, who served the prisoner with the list of witnesses. This is a personal exception to the public prosecutor, independent of the fact that we have been prevented from identifying this person. If we had been prevented by others from getting access to the witness, the prosecutor might have said, that the law would have afforded redress; that we ought to have had recourse to him; and that he was not to blame. But here it was the prosecutor himself who prevented us, the same person who presents a list containing the name of the witness, and at the same time tells me, he will not give me access to him.

Can, then, the public prosecutor act thus? Can he prevent me from identifying the witnesses? Can the person through whose direct act I am deprived of the benefits intended by law from the serving of a list of witnesses—can the public prosecutor, who, while he mocks me with the ostentation of the witness's name, prevents me from inquiring who he is, and making other inquiries material for my defence—can he be allowed, after such conduct, to examine the witness?

Without inquiring into the purpose of all this, I am entitled to say in law, that the witness has not been sufficiently identified,

either by description or otherwise. But the case does not rest merely in that. Even after you have identified the witness, and come to know, out of the five thousand John Campbells inhabiting this Celtic country, who the witness is, and what kind of character he bears, the law still allows other privileges to the panel. It is an unquestionable privilege of a prisoner, by himself, his counsel, or agent, to converse with witnesses, and learn from them what they have got to say. They cannot be compelled to answer; but, from intercourse with them, the prisoner might have had an opportunity of explaining what might otherwise appear to his disadvantage, or might get evidence to meet false statements. But the public prosecutor has, in this instance, denied him access, even under any precautions which might have been thought proper.

It is true, that under the interposition of this Court parties may have access to prisoners who are to be adduced as witnesses against them; but in this case, where there was a peremptory denial of access by the prosecutor himself, who had sequestered the witness in a garrison, I submit that I had no occasion to apply to the Court, because I have been obstructed in the exercise of the privileges which the law allows me, by the lord advocate himself, who served upon me the list of witnesses.

It is not enough to tell me, that I might have got the better of his repugnancy by other means; it is sufficient that he opposed my access, and that I have been prevented by him from identifying the witness, and from learning what law presumes would have been beneficial for my defence, by hearing the statements of the witness, preparing materials to obviate what I might think wrong, and redarguing the statements by other evidence.

I am ready to establish by evidence what I have stated with regard to this and the other witnesses, who are designed as prisoners in the castle of Edinburgh. My statement you will take for granted in the argument. The description of the witness is incomplete, and I was prevented from access to him. The prosecutor has here, in reality, founded upon evidence which was not to be heard of or disclosed, till it appeared at the trial, and I have thus been prevented from ascertaining the facts that would have guided me in bringing counter-statements in defence.

Mr. Drummond.—You have heard an ingenious statement on the part of the panel; but it cannot give your lordships great trouble in disposing of it. Two things are alleged quite distinct from each other. One of them certainly is an objection to the admissibility of the witness; but, as it is obvious that, standing by itself, it cannot be listened to for a moment, Mr. Jeffrey has mixed it up with what is not an objection to the witness at all, but a complaint as to the impossibility of preparing the defence, which is quite out of place here.

As to the objection, that the witness is not sufficiently described by being designed "present prisoner in the castle of Edinburgh," Mr. Jeffrey said, that there is a great number of persons of the name of John Campbell; but the question is, whether there is any other John Campbell, present prisoner in the castle of Edinburgh. If there are other prisoners there of the same name, from whom this witness is not distinguished by the description that is given of him, there may be something in the objection. There is, however, no such statement made; and your lordships need not be told, that it is the daily practice of the court to design persons as prisoners in such or such a tolbooth.

As to the other point, it is not an objection to the admissibility of the witness at all. It is a complaint that access has not been had to the witness for the purpose of obtaining information, as to what is to be said by him here in evidence. But this objection should have been stated by the panel in a motion for delay of the trial. It was said, that the lord advocate had the witnesses shut up, and that he excluded all persons from having access to these witnesses. He claims no authority of the kind one way or another, either as to giving access or refusing it. In that place of confinement, the prisoners were under your lordships' authority. Upon application to you from the panel, it was for you to say, whether his counsel should have access to the witness; and they did not know their duty, if they did not bring forward this to the Court in a previous stage of these proceedings. It is said, that the witness was in the castle; but that is the same thing as if he had been in the common tolbooth. The officers there, under whose custody the prisoners are lodged by the warrant of your lordships, act as jailors under your orders.

This is not a new case. If the panel's counsel had looked to the case of Nairn and Ogilvie,* they would there have seen that witnesses were confined by authority of the Court in the castle. The confinement *there* was to prevent the witnesses from being tampered with, not by my learned friends, or by any person connected with this court, but by other persons of a different description; such as the members of that society or brotherhood mentioned in the oath quoted in the indictment. It was to guard against the witnesses being contaminated, and prevented from telling the truth, that they have been confined separately and closely, as was done in the case above-mentioned.

The panel should have presented a petition to the High Court of Justiciary, as the witnesses stood committed by a Justiciary warrant, and an order would have been given for admission to them, if such a proceeding had appeared proper, in presence of one of the macers of court, or other fit person, in the

same way as admission was allowed to the witnesses who were confined in the case of Nairn and Ogilvie. He has been too well advised not to be informed what steps to take in order to obtain access, if it had been thought of advantage to him, and he had been legally entitled to it; and the bringing forward this objection only now, is obviously to prevent the case going to the jury at all, as the same objection would apply to all the witnesses. If it had been wished to serve the ends of justice, and allow the facts to be completely disclosed, whatever way they may tend, this objection would not have been reserved in this manner, but would have been stated in a proper stage of the business.

Lord Advocate.—My learned friend has given a conclusive answer to the objections, and I shall not detain your lordships by enlarging on the subject. It is proper, however, for me to state the concern I have had from the beginning in this matter. When these persons were first imprisoned, I thought it my duty to relieve your lordships, at the expense of much trouble to myself, from the fatigue of constant applications from friends of the parties for admission to visit them; and I intimated, that if the names of those wishing access to the prisoners should be communicated to me, I would grant my consent or not, as I saw cause; and if I refused to afford it, it was competent to apply to your lordships for redress. Accordingly, when an application was made to me, that the counsel or the agent in this case should be admitted to the witnesses, I thought it my duty to state, that I did not mean to consent; and they then had the means of applying to your lordships, the imprisonment being on your lordships' warrant, and not on mine. I stated accordingly, in point of fact, that these individuals being imprisoned upon your lordships' warrant, application might be made elsewhere, if they considered themselves aggrieved. But no such application was made. The prisoner, too, has been at this bar at different times, when he might have stated his wish; and no application having been made, it is now too late to bring the objection.

Lord Justice Clerk.—Have you any thing to say in reply, gentlemen?

Mr. Jeffrey.—I shall trouble you with a very few words. If I understand the argument for the prosecutor, it is, that our objection, so far as substantial, is not to the designation of the witness, but to the obstruction to the prisoner in the preparation of his defence. It is true, that is the ultimate ground of the objection; but is not that always the ultimate ground of objection to the production of any witnesses?—that as to the witnesses, in some way or another, the conduct of the prosecutor has improperly narrowed the power of defence? The ground the Court has always gone upon is just, whether the prisoner can make out any

* 19 How. St. Tr. 1235.

probable case of having suffered disadvantage in preparing his defence:

Is it right to say, I should have applied to the Court? Am not I entitled, when a witness is produced, to state any thing in the conduct of the public prosecutor by which obstruction was thrown in the way of preparing the defence? Is it sufficient to reply, it is not time now to make the objection? If the public prosecutor has done any thing wrong, and continues it up to the day of trial, is it enough to say to me, I should have gone to the Court sooner with my complaint? He is not entitled to such a plea. If the prisoner thinks the conduct of the public prosecutor gives him a right to object to testimony against him, he is not bound to remedy the blunder or impropriety of the public prosecutor. And, the proper time for making the objection is, when the witness is brought forward.

Then, what is the objection? The objection is, that, in consequence of the fact of the witness being a prisoner in the Castle, I have been prevented by the public prosecutor from identifying that witness, or getting at the statement he is to make against me. Whatever directions the public prosecutor may have given, Mr. Warrender in his letter, says, "I am directed by the lord advocate to acknowledge the receipt, betwixt ten and eleven o'clock last night, of your letter to him of yesterday, applying, as agent for Andrew M'Kinley, to get access to Hugh Dickson, Peter Gibson, John M'Lachlane, William Simpson, and John Campbell, prisoners in the Castle of Edinburgh, and James Hood, prisoner in the tolbooth of Glasgow; and, at the same time, to acquaint you, that *his lordship does not feel himself warranted to give his consent to your getting admission to these persons.*"

"They are all in custody, under charge of being engaged in offences against the state, and they have been already cited as witnesses, to give evidence on the trial of Andrew M'Kinley. Upon both these accounts, therefore, *the lord advocate deems it incumbent on him to withhold his consent, as public prosecutor, from their having any communication whatever with the agents of the panel, should any other steps be taken to obtain that object.*"

Our averment is, that we received a peremptory refusal of access. There was no modification or hint that we might apply to the Court, but it was a peremptory and positive refusal, the officer having previously told us, that, without an order from the lord advocate or the Crown agent, we could not obtain access to the prisoners. The custodiar did not say, he must have a warrant from your lordships, but, except upon an order from the crown agent, he would not admit us. And we went, therefore, to the only quarter to which we were referred by the actual custodiar of the witness. —The fact is, that, when the agent applied to the custodiar, he was shewn a letter, desiring an exclusion of all persons except those coming with a warrant from the Crown agent,

who represented the lord advocate;—and he gave a peremptory refusal.

If we had been prevented from seeing the witness in consequence of the opposition of a third party, I could understand the propriety of applying to your lordships; but, if the lord advocate, who incarcerated the witness, and who was referred to, as the only person who could grant liberty of access—if he refused it, he gave an illegal obstruction, by his own admission; for he admits, that, if I had applied to you, I should have obtained the access.

Lord Advocate.—I admit no such thing.

Mr. Jeffrey.—I am entitled to have access to all the witnesses in the list served upon the panel. If I have no access to them, they are witnesses against the panel, without the nature and advantage of the promission to him, which the law requires. The testimony depends upon words used by those individuals months ago, and we should have been entitled if you had power to grant it, to have had access to those persons. If you are of opinion, I had right to see the witnesses through the intervention of your lordships, and if the lord advocate, to whose authority I was referred by the custodiar, barred my access to them, that I might not have the means of casting his evidence;—in consequence of his conduct before the trial, he is not entitled now to bring forward those witnesses. Such an argument as that of the prosecutor is not allowed in a court of law. Suppose the fact were, that, instead of the castle of Edinburgh, in custody of a military officer, another witness were now locked up in a small cellar of his majesty's advocate in Queen-street. I knock at the door, and ask the servant to admit me to the prisoner—he refers me to his master—and he refuses the access required—would it be enough, afterwards, to say, I should have made application to the Court? Is it enough to say, there is a remedy somewhere, previously to the trial? It is enough for me to say to the prosecutor, you must run the hazard of your witness, and you cannot oppose difficulties to me and tell me they may be obviated by application in another quarter.

As to the case of Nairn and Ogilvie,—in the list of witnesses there given, there was nobody designed as prisoner in the Castle. How then can that case be parallel to the present, when all I am told of the witness is, that he is a prisoner in the Castle, and when I go there, I find the ghost of the lord advocate standing at the prison bars, and nobody but the lord advocate can get admission to the witness? I asked his leave to see the witness, and he refused me. It is quite unnecessary to enquire whether I might have obtained admission by applying to the Court, and given up the benefit of my stating the objection now. The prosecutor took upon him to refuse me access to the witness, and I found my objection to the evidence of the witness upon that refusal. Upon all the principles of law, this is an ob-

jection to which no answer can be made. The fundamental principle, which requires a list of the witnesses to be furnished to the panel, would be defeated, if the person who serves it could take such measures with regard to the witnesses as to prevent the panel from identifying them.

Mr. Drummond.—As to the case of Nairn and Ogilvie, I did not say it was parallel to the present case, or that any witness was there designed "prisoner in the castle." I stated it as a precedent, to show, where access could not be had to a witness in the castle of Edinburgh, the course which should have been followed by the panel's counsel.

Mr. Jeffrey.—But here—

Mr. Clerk.—Mr. Home Drummond is very willing to make a reply himself.

I have just a word to remark on the case of Nairn and Ogilvie.

In the present case the lord advocate describes the witness as prisoner in the castle of Edinburgh. What is the principle upon which you receive such a description? It is, that it is in the power of the panel to go to the prison to see the witness.

In the case of Nairn, the lord advocate did what was regular and proper. He designed all the witnesses. There was no objection to the descriptions of them. They were imprisoned in the castle, and the parties were left to apply to your lordships to get access to them.

But, is that a similar case to this, where the lord advocate gives no designation or means to distinguish the witness? for though he designs him as prisoner in the castle, he shuts him up there, to prevent us from knowing who he is;—and, secondly, he prevents us from examining the witness.

There is no resemblance between the two cases. Nothing is done fairly here—there is no description of the witnesses, and the panel is debarred from access to them. If there has been any thing illegal in the conduct of the lord advocate, he cannot examine the witness.

Lord Hermand.—It would be very fortunate for the panel, and I should rejoice at it, if this objection were well-founded, because the Court would immediately adjourn, and the trial could not go on.

A case occurs to me as like the present; and it is this—that an objection is purposely kept up, and (which does not apply here) for the very purpose of defeating the ends of justice. Where exhibits are mentioned in an indictment, it is always stated, these shall be lodged in due time, so as to be produced in evidence. I remember the case of Lyal, in 1811. There the articles were sealed up in packets, and they came without making application to the Court upon the trial, and said they were not lodged in due time, as they were shut up and could not be seen. What did the Court do? They repelled the objection. The

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same thing happened in the case of O'Kane, 1812, where bank-notes were lodged in a sealed parcel.

The case of Nairn and Ogilvie could not easily escape observation, as it was a remarkable trial.

If I were to decide upon the letters, I would call for them, but I do not think that necessary. I think the lord advocate judged well. I do not know whether he has a command over the macers; but he said he did not think it right to interpose with regard to the panel's counsel getting access to the witness.

Mr. Jeffrey.—I deny that.

Lord Hermand.—If I am mistaken in that, I do not want to state it, I think, if there had only been a junior counsel here conducting the defence, he would have had recourse to the case of Nairn and Ogilvie,—and, upon principle, I am clear that the whole officers concerned, the fort major, crown agent, and lord advocate, acted with great propriety. The panel did not take the course pointed out by the decision. It is true, that the case of Nairn and Ogilvie does not in every particular apply here;—but in every case, even in cases in the civil courts, the designation of a man as present prisoner in a particular gaol, is a common designation. Nor could there be any mistake here, unless there were a number of prisoners of the same name.

Lord Gillies.—As to the consequences of disposing of this objection, I lay them out of my consideration. Let them be what they may, they ought not to affect our judgment on the present point. I do not sit here to judge of the propriety of the conduct of the officers. The fort-major, I should believe to have acted with propriety; but that is not the question before us. And, I must own, that before giving any judgment on that which is before us, as I wish to avoid stating any thing that might be considered inaccurate, I should wish, before giving an opinion upon the facts, to have them ascertained by proof. For, it is very possible, that, in my notion of the facts, I may be inaccurate; and in any opinion I should deliver relative to them, the one or other party might tell me I was wrong. I am, therefore, against proceeding on supposition, or on a general notion of them. I wish them ascertained.

As far as this is an objection to the designation of a witness, this is the proper and only period for having it brought forward. Mr. Drummond will acquiesce in that.

The designation "prisoner there" is, *prima facie*, a good designation, as the panel's counsel might go there and enquire who the prisoner is. But, the prisoner at the bar, says, he was deprived of the means of doing so, and by the lord advocate. Whether that is true or not, I know not; and, till I know that, I shall not give my opinion.

Lord Pitmilly.—My opinion is formed, but

I shall defer giving it, till I find how the fact stands.

Lord *Rosten* and Lord *Justice Clerk* said they had no objection to an examination of the fact.

Lord *Advocate*.—A minute should be given in.

Mr. *Jeffrey*.—I am willing to give in a minute. My averment is, first, that this person, being under the custody of the governor of the castle, an application was made to the authority there to get access to him.

Lord *Advocate*.—A proof of nothing can be allowed unless there be a written statement upon the record of the court. I wish to state what I admit and what I do not admit.

Mr. *Jeffrey* gave in the following statement :

“ Mr. *Jeffrey* objected, and offered to prove, 1^{mo}. That the witness in question being only described as present prisoner in the castle of Edinburgh, the agent for the panel applied in person to major *Martin Alves* for access to him, which was refused, until some warrant or authority should be obtained from the Crown agent; and at the same time the major stated to the agent, that he had peremptory orders from his superiors to refuse all access, except to persons having such authority. 2^{do}. That the agent for the panel afterwards applied by letter, which will be produced both to the crown agent and the lord advocate, requesting access in that character to this and the other witnesses in the castle. 3^{tio}. That, in return to these applications, he received a letter from the crown agent, which will be produced, stating, that he was directed by the lord advocate to decline granting any such permission, and that this was expressed without any qualification whatever, and in express and peremptory terms.”

The lord advocate wrote and gave in the following answer:

“ *Advocatus* answered, that when the prisoners were incarcerated in the castle, he gave directions, that, in order to save trouble to the Court, under whose warrant they were detained, and under whose authority access to them might at all times, if applied for and found by their lordships to be proper, be obtained; that it should be intimated to the officers in the castle that he or the Crown agent would extrajudicially grant his consent where no objections occurred, that persons applying to see them might be admitted, and by which the necessity of a formal application in every case would be prevented. That this was all the public prosecutor could do, or could be supposed to have done by such direction, having no power himself to exclude any person from the pri-

soners. That when applied to by the panel's agent to be admitted to the other prisoners in the castle, he directed the Crown agent to intimate that he deemed it incumbent upon him to withhold his consent from such admission being granted, leaving it as matter of course to the panel to apply, if so advised, to the Court, to obtain their lordships' authority for obtaining such admission, but stating, that if that was made it would be opposed.”

The following interlocutor was then pronounced.

“ The Lord Justice Clerk and Lords commissioners of Justiciary having considered the foregoing objections, with the answers thereto, and heard parties procurators thereupon; before answer allow the procurators for the panel a proof of the facts they aver, and offer to prove in relation to the said objections.

(Signed) “ D. BOYLE, J. P. D.”

Mr. *Jeffrey*.—I shall read to the Court the correspondence which took place upon the subject.

Copy—LETTER from MR. RAMSAY to the LORD ADVOCATE, dated 2nd April, 1817.

“ My Lord;—I am directed by the counsel for Andrew M'Kinley, to apply to your lordship for authority to get access to Hugh Dickson, Peter Gibson, John M'Lachlane, William Simpson, and John Campbell, prisoners in the castle, and James Hood, in the Tolbooth of Glasgow; having been informed by Mr. Warrender, that he could not give such authority. The men are included in the list of witnesses, served on M'Kinley; and his counsel are desirous that some person, on his part, should have an opportunity of seeing them. As the day of trial is just at hand, I beg your lordship will favour me with an immediate answer.

“ I have the honour to be,” &c.

Copy—LETTER from MR. WARRENDER to MR. RAMSAY, dated 3rd April, 1817.

“ Sir;—I am directed by the lord advocate to acknowledge the receipt, betwixt ten and eleven o'clock last night, of your letter to him, of yesterday, applying, as agent for Andrew M'Kinley, to get access to Hugh Dickson, Peter Gibson, John M'Lachlane, William Simpson, and John Campbell, prisoners in the castle of Edinburgh, and James Hood, prisoner in the tolbooth of Glasgow; and at the same time, to acquaint you, that his lordship does not feel himself warranted to give his consent to your getting admission to these persons.

“ They are all in custody, under charge of being engaged in offences against the

state; and they have been already cited as witnesses, to give evidence on the trial of Andrew M'Kinley. Upon both these accounts, therefore, the lord advocate deems it incumbent upon him to withhold his consent, as public prosecutor, from their having any communication whatever with the agents of the panel, should any other steps be taken to obtain that object.

"I am, Sir," &c.

Copy—LETTER from MR. RAMSAY to MR. WARRENDER, dated 28th May, 1817.

"SIR;—I had a letter from you some time ago, in answer to an application I made to the lord advocate, for access to those witnesses against Andrew M'Kinley, who are under close confinement. Their names are, Hugh Dickson, Peter Gibson, John M'Lachlane, William Simpson, John Campbell, and James Hood, all prisoners in the Castle of Edinburgh. As it is of the utmost importance to M'Kinley, that some person, on his part, should have access to these men, I trouble you with a renewal of the request which was then refused. The reasons which induced this refusal may now have ceased to operate with the same force? and if so, I beg you will give directions that I shall have access to them, along with one or more of the counsel for M'Kinley.

"I remain, sir," &c.

Copy—LETTER from MR. WARRENDER to MR. RAMSAY, dated 29th May, 1817.

"SIR;—I am just now favoured with your's of yesterday. In answer to which, I can only refer to my former letter, not having, since that time, received any instructions contrary to what was then signified to you.

"I am, sir," &c.

Copy—LETTER from MR. RAMSAY to MR. WARRENDER, dated 15th July, 1817.

"SIR;—Notwithstanding of my former applications for access to the witnesses against Andrew M'Kinley, who are in confinement, having been refused, I consider it of so much importance to him, that an opportunity of seeing them should be afforded, that I cannot help troubling you with another application. It is only through you that access can be obtained; and I think it is not unlikely that you may have received other instructions, since I formerly heard from you on this subject.

"I am," &c.

Copy—LETTER from MR. WARRENDER to MR. RAMSAY dated 15th July, 1817.

"SIR:—In answer to your's of this date, I can only refer you to my former

letters on the subject, not having since received any further instructions.

"I am, sir," &c.

Mr. Jeffrey.—You will bear it in mind that it is a part of my averment, that the actual custodiar stated, and shewed written authority for it, that he had no power to grant admission, under any other authority than that of the lord advocate.

Lord Gillies.—Unless the lord advocate contradict what Mr. Jeffrey has stated as to the fort-major, I think we are bound to hold the matter to be as stated by Mr. Jeffrey.

I conceive this is the proper time for objecting to the designation of the witness.—It is not a direct objection to the designation. The situation of the witness was sufficiently pointed out, to enable the prisoner to go to where he was, and to apply to the commanders in the castle to see Campbell. I am clearly of opinion, that the prisoner was entitled to have access to John Campbell. He was entitled to have access to him, both to learn who the individual was, and in order to make inquiry as to the nature of the evidence he was to give against him. This is the law of Scotland. I do not say it is a matter of absolute right; but, *prima facie*, it is a right which every prisoner enjoys. If it should be stated in the proper quarter, that there are reasons against it in any particular case, the Court would refuse it, if it judged the reasons to be sufficient for the refusal. But standing, as this case does, we must presume that the prisoner was entitled to have access to the witness. This being the case, what does the prisoner's agent do; He naturally applies first to the commander of the Castle, and he is told he must have the authority of the Crown agent, or of the lord advocate. He applies to them, and he is by them told they would give no such authority or consent. "The lord advocate deems it incumbent on him to withhold his consent, as public prosecutor, from the witnesses in the Castle having any communication whatever with the agents of the panel, should any other steps be taken to obtain that object." This is the intimation by the lord advocate, that if application be made to this Court, he will not consent to that application. What, then, was the step to be taken by the prisoner? He should have applied to this Court, and then your lordships, with or without consent of the lord advocate, would have granted access to this witness. I am not now entering into the question whether access would have been allowed for inquiry as to the nature of the evidence to be given by the witnesses at the trial; but to this extent, at least, the panel had clearly a right of access—to learn who the witnesses were—to identify the persons named in the list served upon him. This application has not been made by the prisoner, ably assisted as he has been. If any bad consequences follow, the blame lies with his counsel, as he was not

advised to make the complaint at the proper time. It is now too late. And the decision referred to would, in point of principle, have applied to the present case.

Lord Pitmilly.—This question as to the admissibility of the witness embraces two points. The first relates to his designation. The second relates to the application for access to him, made by the panel's agent to his majesty's advocate.

The objection to the designation is, that the witness is designated "present prisoner in the castle of Edinburgh." That is no good objection to the designation, unless, as Mr. Drummond stated, there were others of the same name there. There are many instances of such designations, which have been always considered sufficient, and therefore it is not a good objection.

The second objection is, that access to this witness was denied. As to that objection, I concur with what has just been stated, that this is not the proper time to bring forward such an objection. I did not think the proof on the subject was relevant; but when such an assertion was made, it was desirable for the Court and Jury to ascertain the facts. But if the lord advocate, or any other, refused consent for access, and if there was any claim for the prisoner to have access, application should have been made to this Court, and no time would have been improper for it but the present. If the panel's counsel had applied yesterday, with these letters, and had stated their desire to have access to the witness, the Court would have considered the application. If they had done so this morning, before the jury was formed, the Court would have given it consideration. But the only improper time for making the application is now, when the trial has commenced. It would be productive of evil consequences, if this objection were to be supported.

Lord Reston.—I am entirely of the opinions which I have heard from your lordships. The objection as to the designation is not sufficient. Suppose the application had been made to a proper gaoler, and he had refused to grant access, then this Court, on being applied to, would have ordered access to be allowed. But the lord advocate is not the gaoler, and his refusal is no reason for not applying to your lordships.

Lord Justice Clerk.—I am clear, now we have the facts before us, the objection ought not to be sustained by your lordships. No such objection ever could be sustained, except when the prisoner would otherwise suffer injustice. But no injustice can be complained of by the prisoner before us, because the three letters by his own agent show, that application was not made to the proper quarter; and though put on his guard that the consent of the prosecutor would not be given, although other steps should be taken in order to obtain

access, yet the application never was made where it ought to have been. For though the lord advocate thought it right to refuse admission, he had not the authority to control the prisoner, and prevent him from applying to us. If the commanding officer in the castle, under the circumstances which here occur, had refused to comply with our order, he must have answered the refusal at his highest peril. We have equal charge and command over prisoners committed by our warrant to the castle, as we have with regard to persons committed to any of the common prisons; and it is impossible for any one to doubt, that obedience must have been given to our order for access to the panel's agent and counsel. I would have granted access without hesitation upon proper application, and at any stage of the proceedings. Your lordships would have listened to it this morning, if a statement had been made, that disadvantage had arisen from the want of access, and the trial would have been delayed. The present is the only improper time when application could have been made to your lordships.

The Court pronounced the following interlocutor:

"The Lord Justice Clerk, and Lords Commissioners of Justiciary, having considered the said letters, they repel the objections, and allow the witnesses to be received."

(Signed)

"D. BOYLE, J. P. D."

John Campbell was called, and the oath administered to him by lord Hermand.

Lord Hermand.—Have you any malice or ill will at the panel at the bar?—No my lord.

Has any body given you a reward, or promise of reward, for being a witness?—Yes, my lord.

[The answer not being distinctly heard, lord Hermand continued.]

Has any body told, or instructed you what to say as a witness?—

Mr. Clerk.—We have some questions to put on this matter.

Mr. Jeffrey.—Will your lordship be so good as question him again? I don't think the answer was distinctly heard.

Lord Hermand.—Do you hear, sir, what I say, and answer distinctly—Has anybody given you a reward, or promise of reward, for being a witness?—Yes, they have.

Lord Justice Clerk.—I think it right to warn the witness—You are now adduced as a witness in this prosecution for the Crown. I am bound to tell you, that in reference to the crime which is charged by the prosecutor against the panel, you are not in any parallel situation with the panel, and it is not competent to bring you for any concern you had in these transactions,

to any prosecution, after your being adduced as a witness. It is necessary for you to tell the whole truth, in as far as you know it, relative to all matters as to which you may be asked now, or at any future stage of the examination. I have to admonish you, that, as to the questions now put, or that may be put; you are to disclose the truth, and nothing but the truth; and that as to your situation, you stand in no risk, unless you state upon your oath what is contrary to the truth. If you do so in any part of your examination, be assured your being a witness will not prevent your receiving punishment. It is my duty to give you this admonition, and keep it in view.

Witness.—I am aware of the nature of an oath. Where I stand, I have called God to witness to the truth of what I assert, as I shall answer at the day of judgment. I am likewise sensible, that what I have now stated may be construed as proceeding from my concern with the prisoner, and that it may be thought I have taken this method in order to save him. It will probably be believed also, as to the persons who have given this promise, that their word should be taken before my oath. In my situation, if I can produce even presumptive proof, I hope to convince the world I do not perjure myself. I shall state the names of the persons, and the whole circumstances.

[The witness's statement was ordered, on the motion of the lord advocate, to be taken down in writing.]

Mr. Jeffrey.—I am enabled to ask pointed questions of the witness. If I ask improper questions, the lord advocate may stop me.

Lord Justice Clerk.—The correct way of proceeding, is to desire the witness to explain his statement, and the prisoner will afterwards be allowed to put questions to him.

Mr. Jeffrey.—I am satisfied.

Lord Justice Clerk.—I ask you to state distinctly and accurately the grounds which have made you make this answer.

Witness.—I will state the circumstances as distinctly as possible, and you will make allowance for my want of education preventing my going through the circumstances so well as a person would who has had the advantage of more learning. I cannot easily explain them without going back to the beginning. It will be necessary that I commence from my examination at Glasgow.

The following deposition was then taken down by the Clerk of Court.

“Depones, That he was apprehended along with the prisoner at the bar, he thinks, on the 22nd of February last, without cause assigned, and without a warrant: That upon the Tuesday or Wednesday following, he was examined before the sheriff-depute of Lanarkshire, and was interrogated, if he knew what he was

brought here for: That he stated, that he did not know, and that the sheriff insisted that he did, and it would be wisdom of him to make his breast clean. After some similar conversation the sheriff went out, leaving the witness with Mr. Salmond, and he is not sure whether any other person was present or not: That Mr. Salmond came up to the witness, saying, ‘John, you perhaps do not know that I know so much about this affair;’ and adding, ‘I know more about it than you think I do.’ Depones, That Mr. Salmond added, ‘I suppose you do not know that I have the oath you took at Leggat’s on the first of January?’ He then shewed him a scroll of an oath, saying, ‘You see John, I have got it;’ adding, that ‘you and other persons (whom he named) took that oath in Leggat’s on the first of January.’ The witness then told him, that he had not taken that oath.* Depones, that after several examinations before the sheriff, and being often closeted with Mr. Salmond, on one of which occasions, after using many entreaties to the witness, and these having failed, after railing at the prisoners as villains, who had betrayed him, the witness, and stating, that it was out of respect to him that he wished him to be a witness, Mr. Salmond said, ‘John, I assure you that I have six men who will swear that you took that oath; and you will be hanged as sure as you are alive.’ Depones, That upon this he told Mr. Salmond, that if he got six men to swear that he took that oath, they would perjure themselves. He answered, ‘John, John! it is impossible to get six men to perjure themselves.’* Depones,

* The following part of the witness’s statement was not recorded:—

“I suppose it is needless to go through any further as to that part of the examination with regard to the ill humour shown me by the sheriff,—threats held out to get me just to say that I would be a witness. I suppose I may come to the engagement between us?”

“*Lord Justice Clerk.*—Do you mean to say the sheriff threatened you?”

“He ran into arguments with me to confuse me—at one time about religion and other matters—at another time putting the same questions in different words that were taken down in my declaration before, and said such questions were not taken down before; and said, Supposing that to be the case, I am not satisfied with your answer, and I have a right to demand answers to the questions. I said, I was obliged to answer him, but that it was wrong in him to put questions to me in different language; and he told me I was impudent.”

* What follows was not recorded.

“*Lord Justice Clerk.*—What did Mr. Sal-

That after this Salmond said, 'John, you will ruin yourself if you persist in this way, but if you take the other way, you will do yourself much good.' Depones, That after much conversation, the witness said he was not afraid of the one way, and he did not see much good he could do himself by the other. Depones, That Mr. Salmond said the lord advocate was in Glasgow, and he would come under any obligation he chose, if he would be a witness. Depones, That shortly after this he was taken before the sheriff, when Mr. Drummond, advocate-depute, came into the room; after which he was examined;—but the subject of the obligation was not then mentioned; and that in a few days afterwards the witness was removed to Edinburgh Castle. Depones, That when in the Castle of Edinburgh, Mr. Drummond came to him and mentioned that M'Kinley had been served with an indictment; and that his name was in the list of witnesses: and that now was the time for him to determine whether he would be a witness or not. That the deponent stated, that he did not wish to be a witness; and that he, Mr. Drummond, knew, that if he was, he need not go back to Glasgow, as he could not live there. Depones, That Mr. Drummond then said that he was quite sensible of that, but that he might go and reside somewhere else; and that he might change his name: But the witness said he would not change his name; and that it would be much the same if he lived in any other manufacturing place as in Glasgow. Depones, That Mr. Drummond then said, he had been thinking of a plan of writing to lord Sidmouth, to get him into the excise; and that if he, the witness, chose, he would write to lord Sidmouth, and shew him his answer. Depones, That he answered he did not choose the office of an exciseman; and remarked at the same time, it was probably the only office under government he was capable for: That it was an office that exposed him to risk and ill-will which he did not choose to encounter, as he had suffered enough from the public while a peace-officer. Depones, That at this conversation no person was present but the deponent and Mr. Drummond; and that Mr. Drummond was with him in the Castle alone at other times. Depones, That at the first interview, after what is above-mentioned, Mr. Drummond asked him what he wanted to have: The witness remained silent, and made no answer. Depones, That Mr. Drummond then said, that if he would give such information as

mond say as to your receiving a reward or promise of reward?"

"It is necessary that I should explain the whole, as it comes along in a chain."

would please the lord advocate, he should neither be tried himself nor made a witness. Depones, That he said that that was an uncertain matter, as he did not know what information they wanted, or that he could give more than they already had; and that if his information did not please the lord advocate, he would lie open to every attack that could be made against him. Depones, That Mr. Drummond then said, 'I do not know what to do with you, Campbell. I wish to do every thing I can to favour you. I shall give you a day or two to think of it.' That Mr. Drummond added, 'do you wish I should call back again?' That after some hesitation the witness said he might do as he pleased, and Mr. Drummond went away. That in a few days afterwards Mr. Drummond came back again, and said, 'Campbell, this is the last time; you must be determined now.' The witness asked if he had wrote to lord Sidmouth, and Mr. Drummond answered he had not, as the witness had rejected it. That Mr. Drummond asked if he had made up his mind yet. Depones, That he answered that he had upon conditions; and upon being asked what these were, the witness told him he wished to get a passport to go to the continent: That Mr. Drummond told him he supposed there was nobody could stop him; and he answered, that being a mechanic, he believed the laws of the country did not allow him to quit it. Depones, That Mr. Drummond replied with a smile, 'Is that all? There is no question you will get that, and means to carry you there.' Depones, That they were standing while this conversation took place; and the deponent said, that upon these conditions he would be a witness, provided his wife was also taken into consideration. Depones, That upon this, Mr. Drummond said, 'Campbell, let us sit down, that we may understand each other properly, as I would not wish that we misunderstood one another at the latter end.' Depones, That the witness mentioned to Mr. Drummond, that his wife was in a very delicate state of health, and had nothing but what she earned to support her; upon that question being asked by Mr. Drummond, and that if it was known that he was to be a witness, she would suffer from ill-will by the public: That Mr. Drummond then replied, poor woman, she must be ill off; and desired the witness to write a letter, and mark a one-pound note in it, and give it to Mr. Sibbald, who would bring it to him, and he would put a one-pound note in it for his wife: That Mr. Drummond also desired the witness to state to his wife, that he was to be a witness, and to desire her to leave Glasgow and go to the witness's father's at

Symington, in Ayrshire. Depones, That he said that would be the first thing to discover that he was to be a witness, as his wife could not read or write. Depones, That after some conversation about writing to the town-clerk of Glasgow, or some friend of the witness's, it was agreed that the witness should write a letter to his wife, stating that a friend of his had sent her a one-pound note, to pay her expences into Edinburgh by the coach, and that she would receive money here to carry her back again: That this letter was given to Mr. Sibbald, in consequence of the conversation with Mr. Drummond, but that some days afterwards it was brought back by Mr. Drummond, who told him, that the lord advocate disapproved of sending such a letter, but thought it more proper that Mr. Salmond should be written to, to send for the witness's wife, and tell her that he wanted her to come to Edinburgh. And after this, Mr. Drummond read to him a letter he had received from Mr. Salmond, stating, that a ticket had been bought; but a postscript of the letter mentioned that his wife, from her state of health, declined to come: That Mr. Drummond returned the witness's letter, which he burnt. Depones, That he was informed by Mr. Drummond that the sheriff was coming to examine him, and that it was agreed upon, that, in answer to the first question, he, the witness, was to state, and have it taken down, that he was to receive a passport to the continent, and the means to convey him there, it being understood that Prussia was to be his destination; That the sheriff, and, as he believes, the sheriff-substitute, the solicitor-general, the procurator fiscal of Edinburgh, as he understood, and a clerk, came into the room; and Mr. Drummond having asked, 'Campbell, what have you got to say in this business?' the deponent answered, that, supposing he was concerned in that affair, and was to tell the whole truth, that he did not consider either himself or his wife safe; and that, without his getting a passport to go to the continent, and the means to carry him there, he could not be a witness; upon which Mr. Drummond, turning to the solicitor-general, said, 'Answer you that:' That the solicitor-general then ordered the clerk to write these words, as he thinks. 'Whereupon the solicitor-general assures the declarant, that every means necessary will be taken to preserve him and his wife, and that he will get a passport to quit the country or go to the continent (he is not sure which), and the means to carry them there:' That during this time, the sheriff was walking up and down the room, which is a pretty large one; and when

the above words were taken down, he was desired to come and sign this. Depones, That the sheriff came and sat down at the table; and, after perusing the paper for some time, said, 'I will not sign this;' and added, 'that, as he was an officer of the crown, it was his duty to see justice done: and he could assure the witness, if he was to sign that paper, he would not be answerable for it for a good deal; for that, if the deponent was brought to his oath, and should swear that he had received no promise of reward, and this paper signed, he would perjure himself:' That the witness answered, 'No, if it was considered as a means of his preservation;' upon which he was supported in the same argument by Mr. Drummond; upon which the sheriff said, he would sign no such paper: That Mr. Drummond then proposed, that it should be put down that he was to get the means of carrying him to any of the British colonies, in place of going to a foreign kingdom; but the sheriff also refused that, and added, 'that he was willing every thing should be set down for the preservation of him and his wife, but nothing further:' That after the sheriff had stated this, there was a pause for some time; when Mr. Drummond, looking at the deponent, said, 'Campbell, you know whether you can be a witness on these terms or not,' The witness remained silent; and some time after, Mr. Drummond said, 'Now, Campbell, do you believe that we can do that for you which you expect, without its being set down in the paper?' and that at this time, as he thinks, the Sheriff was sitting at the table, the Solicitor-general and Mr. Drummond standing at the fire, and the other gentlemen walking about the room: That the witness answered, he knew they were able if they were willing; to which Mr. Drummond replied, 'Could he rely upon them for that?' The witness answered, 'May I?' Mr. Drummond answered, 'You may;' and that the witness said pretty loudly, 'Well, then, I shall rely upon you as gentlemen.' Depones, That shortly after this he was allowed to write his declaration himself, all excepting one part relating to a Mr. Kerr: That, a few days after this, the Sheriff, the Procurator Fiscal, and a clerk, came up to have his narrative signed, which was done; upon which the Sheriff said to him, 'Campbell, after you have got clear of this, you had better go home to your loom, and let them rule the nation as they please:' That upon this the deponent said, that rather than go back to his loom he would be served with an indictment himself, even after all he had written: That the Sheriff answered, 'he had nothing to do with that—it remained

between the witness and others.' Depones, That he was visited by Mr. Drummond after this, who ordered Captain Sibbald to get him plenty of books, and that he has read near an hundred volumes since that time: That, about a fortnight or three weeks ago, he wrote a letter to Mr. Drummond, that he was in need of a pair of shoes and a pair of trousers, and that his wife was in need of money. Depones, That he did receive a pair of shoes from Captain Sibbald, by the orders of Mr. Drummond, as Captain Sibbald said, but that he could not then get any money, but that, as soon as the first trial was over, he would get money: That he wrote another letter to Mr. Drummond, stating part of what was in his declaration, as a gentle demand for money, and received the same answer, that he could get no money at present, but that he would get some after the first trial was over; and that he, Sibbald, told him he had got this answer from Mr. Drummond. Depones, That although their engagement is not in writing, in consequence of the interference of the Sheriff, and which writing was immediately burned in the Sheriff's presence, he considers it still a subsisting private engagement, upon the performance of which he thinks himself entitled to rely; and that the declaration, which he signed and gave to the Sheriff, was made upon a reliance on that engagement. Depones, That at the conversation with Mr. Drummond, when he got an order to get the books, he was then cited as a witness on the trial of Andrew M'Kinley, and the first book that the deponent received from the library, in consequence of that order, was upon the 22nd day of April last. Depones, That he was not cited as a witness at the time he signed and delivered his declaration to the Sheriff, and that the conversation about the books took place in the week that Mr. Drummond went to the Circuit at Glasgow. Depones, That The first idea of apprehension of his being in danger was suggested to the deponent by the Sheriff and Fiscal at Glasgow, who asked him, if the reason why he would not be a witness was, that he considered his life to be in danger? That he cannot say that he considered his life to be in danger, but that he did not choose to go back to Glasgow after being a witness. Depones, That he did not tell Mr. Drummond that his life was in danger, as Mr. Drummond seemed to be impressed with that idea, and the deponent continued to carry it on. Depones, That in the conversations above-mentioned with Mr. Drummond, or any of the other gentlemen, there was no attempt whatever made to instruct him in any way as to what he should say in giving evidence as a witness. All which

is truth, as the deponent shall answer to God.*

(Signed)

"JOHN CAMPBELL.

"D. BOYLE, J. P. D."

* COPY—Letter addressed "Hume Drummond, Esq. Advocate, Edinburgh."

Edinburgh Castle, 31st March, 1817.

Sir;—After consideration I can see no way that wife can be informed how she is to act but by your writing Mr. Salmon giving him instructions and by me writing at sametime to her to call upon him and attend to what he tells her to do you must cause Mr. Salmon to state to her that I was under the necessity of acting in the manner that I have done and to shew her the danger that she is in to stop about Glasgow and that I request her to go out by the mail to Kilmarnock and then walk to Symington to my fathers and after stopping there a few days to go down to Irvin and stop there in my Sisters a night and next day walk to Saltcoats where she must take a room for herself and live there till that I send for her as also in Saltcoats she will be more Comfortable beside her mother Brothers and Sister than in any other place and that she is to write to me as soon as she reaches my fathers but Sir I must also state that it is needles to send her away without the means of support as my ffather is an old man and has no income but his Pention as well her mother is a widow and is sustained by a son who lives in the house and he being a weaver they cannot but be poor and she has not the same opportunity of earning a shilling in Saltcoats as in Glasgow and weakly constitution, and in the situation in which she is at present will not admit of labourious work as also she cannot remove any of the furniture without paying the house rent that sum being only 1l. 3s. which I owe to the Laird of house rent having paid him the last half year's rent and 1s. more—I owe him 1l. 10s. of loom rent at Witsunday that is a thing that has no concern with the House as it was taken seperatly and if the house rent be managed tell Mr. Salmon to be sure and order her to give it in nam of house rent or do not give it at all and that she must have all the things upon the Saltcoats carriers cart upon friday at farthest and be off herself upon saturday Mr. Salmon at same time writing a letter by post the night before the things goes away to William Archibald weaver in Saltcoats stating that the furniture is coming with the carriers and that Martha his Sister is gone to my fathers but that she will be there in a few days (An expression is here omitted as relating to third parties.)

I remain Dear Sir yours

most respectfully

(Signed)

JOHN CAMPBELL.

(P. S. to the foregoing letter.)

I wrote the report of that meeting on the 31st and 32nd page of my declaration now

Mr. Jeffrey.—If I understand, on the part of the prosecutor, that the facts now disclosed, are disputed, I am prepared to corroborate

Sir if you positively do not see a way for me to escape out of their hands I would request it of you as a particular favour that you would serve me with an Indictment even although that I have criminated myself as I would rather die by the hands of the executioner than by the hand of an assassin as it would not be a ball through the head or body that would satisfy but would employ every kind of torture that conveniency would allow or that malice could invent.
Yours &c.

(Signed) JOHN CAMPBELL.

The foregoing letter was inclosed and transmitted in the following letter from Mr. Drummond to the Procurator Fiscal at Glasgow:

Edinr. April 1, 1817.

SIR;—The inclosures will explain themselves.* We are certainly bound to insure the woman's personal security, and in order to effect that, you may cause her to be sent off to Ayrshire by such mode of conveyance as the situation of her health renders necessary, supplying her with the means of travelling and subsistence of which she seems totally destitute. As to the house rent and furniture it is impossible to say any thing. Campbell has been promised such measures as are necessary to secure his personal safety, and that of his wife, without which it is impossible to expect that he should give an unbiassed evidence, or indeed any evidence at all.—Farther he must be left in the situation of every other witness.
I remain,

Sir,

Your most obedient servant,

(Signed) H. HOME DRUMMOND.

Mr. George Salmond,
Procurator Fiscal Glasgow.

P. S. I have heard nothing of Campbell's wife having arrived here. Is it not a little awkward for you to be seen about her house? I mean on her account. But you know best.

COPY—Note addressed "To the Sheriff of Edinburgh," accompanying some additions to John Campbell's Declaration.

SIR

Having neglected what I have here wrote at the time of writing my narrative I considered it prudent to write this as an addition to my former narrative on account that I would feel myself very embarrassed if that these omissions were not made known to the Crown Counsel till I made them known when upon oath before the Court—and for this reason I hope you will have the goodness to forward it to the

* The other inclosure was a letter from J. Campbell to his wife.

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them, by the examination of the persons pointed out in the deposition which has just been given. And, in particular, in that event,

Crown Counsel by so doing you will much oblige y' m' ob' ser'

(Signed)

JOHN CAMPBELL.

COPY—Letter addressed "H. H. Drummond, Esq. Advocate, Edinburgh."

Edinburgh Castle 27th June 1817

SIR

Necessity impells me to make you acquainted with my present wants and at same time to crave your assistance in getting my distress in some measure lessened they are in number three two of them are entirely personal and the third concerns both my wife and me the last of which causes me a great deal of uneasiness. and shall therefore take the freedom to state them seperatly which is as follows

My shoes are in such a situation that they do not serve to keep my feet of the ground so that my stockings are in a great measure destroyed and in a few days the want of shoes will leave me without stockings

my trousers are also in that situation that for these some weeks I could not put them on as they were become unfit to serve there design in any sense which caused me to wear a pair of Breeches the cloth of which cost me 32s. pr. yd. a very unfit article for every days wear they are fast changing appearance which will render me soon destitute of clothing.

I now come to the last of the three and the one that concerns me most I informed you before of my wife being Pregnant and of having been in a bad state of health these some years by past I have now to add that I believe she is arrived at that period when that a wife has a right to look for the most tender care—but what must her situation be her husband a prisoner her friends poor who has the heart to assist a person in distress and thus render'd unable to give her attendance when needed the credit of every poor man destroyed by the badness of the times add to this the recollection of having been six days badly with her first child—and to this a Doctor without the view of pay for his labour is seldom known to give his assistance with these prospects I think her misery nearly compleat and my reflections cannot be thought to be very pleasant.

I hope Sir you will excuse my freedom it is very disagreeable to my feelings to be forced to this alternative at this time.

Your consideration of the above will greatly

Oblige your most Ob'. St.

(Signed)

JOHN CAMPBELL.

It is believed that the Jailor furnished John Campbell with one or two articles of dress as is usual with prisoners under similar circumstances, and which he informed Campbell, before delivering the letter, could be done without writing to

I should wish now to call for the examination of the Sheriff, sir William Rae,* that the accuracy and veracity of this witness should be established.

Lord Justice Clerk.—In the view in which this examination presents itself to my mind, it does not appear to me necessary to proceed in this investigation.

Lord Advocate.—I should think, after what has been sworn to by this witness, the statement of Sir William Rae should be given to the Court, and the Court will then determine what line of proceeding should be followed. It will then be for me to consider what line I am to adopt; but till this inquiry be finished I am not called upon to say what I am to do.

Lord Justice Clerk.—Your lordships will say if this enquiry is to be gone into.

Lord Hermand.—Either this man's statement is true or not. If not true, what sort of witness have we here? If it be true, which I disbelieve, for the promise of an office in the excise, and the promise of writing to the Secretary of state, I don't believe; but, if true, the objection to his evidence being received, must be sustained. We are in an equal dilemma against receiving him as a witness, whether his story be true or false.

Lord Gillies.—I concur in the opinion which lord Hermand has given. I should wish very much to have Sir W. Rae examined; but the Court is sitting to try the case of M' Kinley, and it is our duty to proceed in this trial, and examine no witnesses whose evidence cannot affect the result of the trial. If five hundred were examined, say what they like, this man is disqualified from giving evidence. He is disqualified in every way, whether what he has said is true or not. Besides, he has sworn that he considers himself under an engagement, having influence on him, and connected with this trial. Under these circumstances, I cannot go farther into the inquiry. It may be a subject for consideration afterwards, whether any proceeding should be had in regard to the witness; but, at present, it could not lead to any thing towards forwarding the trial.

Lord Pitmilly.—We must attend to the precise point which is before us. All this has come out in the questions put by the Court, *in initialibus*, to this witness, and we are now in an inquiry whether the evidence of Sir William Rae is to be received. I, for one, am of opinion, that it is not *hujus loci* to enter

any person. No answer whatever was sent to the letter, either in writing or otherwise.

[See some farther particulars respecting this witness Campbell, in the Debate in the House of Commons, Feb. 10, 1818, 37 Hans. Parl. Deb. 268.]

* Afterwards Lord Advocate.

upon this enquiry, and that it is not competent to examine Sir William Rae at present.

Lord Reston.—I concur in thinking that Sir William Rae cannot competently be examined.

Lord Justice Clerk.—The opinions now delivered are to the same purport with what I was going to state. However anxious your lordships may be with regard to them, this is not the stage to proceed in an examination of the statements made by the witness; for I am clear, that, even supposing you were to have the most satisfactory evidence, that he has not correctly stated any one of the conversations which he has detailed, he cannot be received as a witness, for he has sworn he is acting under an engagement which he holds to be binding. Therefore, there can be no farther examination of him in this trial.

Lord Advocate.—Your lordships will indulge me with saying, that this mode of proceeding abridges the discretionary power competent to me with relation to pressing the examination of this witness. I have expressed my anxiety that Sir William Rae should be examined; and after his examination was closed, it would have been for me to have said whether I wished or not that the witness should be examined or withdrawn. It would have been within my competency then to have stated, that I did not desire a judgment of your lordships upon the admissibility of the witness Campbell. As it is, it only remains for me to say, that I am satisfied that whatever might have been the evidence of Sir William Rae, after what has been said by the witness, besides what I have now heard from the Court, I should not have considered it as my duty, as public prosecutor, to have pressed the evidence of this witness upon your lordships; and my wish for examining Sir William Rae arose from my feeling of what was due in justice to persons whose names have been mentioned.

One thing, as I am up, you will allow me to say, that I myself have not been in the city of Glasgow for two years.

Mr. Jeffrey.—I wish a statement on the subject to be made on the record.

The following minutes were then given in:

"Jeffrey for the panel, represented, that if the truth or accuracy of the statement now given in the initial deposition of this witness, was not admitted by the prosecutor, he was ready and desirous of corroborating the statement by other witnesses, and accordingly begged leave in the first place, to call for the evidence of Sir William Rae, upon the points alluded to in the preceding deposition."

"Advocatus answered, that he was no less anxious than the Counsel for the panel, that the evidence of Sir William Rae should be taken. Without this evidence the true state of the facts, and

of the conversations alluded to in the foregoing deposition, could not be precisely ascertained. That the precise import of these alleged conversations must be ascertained before the nature and effect of the legal objection could be distinctly estimated: That he had no intention to press the examination in *causâ* of this witness upon the Court; and even after the testimony of Sir William Rae should be taken, it was his intention to withdraw the witness."

The Court declined going into any investigation in this matter.

The witness was then withdrawn.

John M'Lachlan sworn.—Examined by Mr. Drummond.

Do you know the prisoner at the bar?—Yes.

Do you know a person of the name of Hugh Dickson?—Yes.

Do you remember meeting the panel at the bar at the house of Hugh Dickson, in the Calton of Glasgow, in the month of December last?—I could not say whether November or December.

You remember a meeting at his house?—Yes, but not the time.

In the month of December?—I rather suspect November.

Before the New Year?—Yes, a considerable time; I think November.

Who were present there?—I could not say altogether.

Could you mention some of them?—One John Campbell and Hugh Dickson.

Who else?—One Gibson, Peter Gibson. I could not say I can recollect their names; but I think they were all present.

Was the meeting in the evening?—Yes.

What was the purpose of it?—To consider whether it was prudent to commence Reform Societies, as they are called.

Describe what was done at that meeting?—What I recollect. After some altercation taking place, some one was introduced by Peter Gibson, who told us there were some societies about town, who would wish others were formed, and that if he would agree to form societies, they would correspond with them.

Others of the same kind?—He said he understood so. And the question being put—

Go on?—It being allowed by the same individual, that it was necessary they should promise secrecy, there was some altercation upon that subject. The ground stated then for secrecy was; that as it was hinted, for some time previous, in the London newspaper, the London Courier, that the Habeas Corpus might be suspended soon after the meeting of parliament for dispatch of business; and as it was generally understood that a very small crime might be the cause of throwing a man into prison; at least if any unguarded expressions

were used, no one therefore should hurt his neighbour for such unguarded expressions. Any member might use unguarded expressions; and his neighbour should promise not to hurt him for such unguarded expressions.

What was done in consequence of this talk of secrecy?—I was going to proceed, if you please. Then it was proposed an obligation should take place. This was objected to by some, as we did not know how other societies did, or what they were about. All we could do was to promise not to hurt them, till we should know what they were about, and see what were the grounds or meaning of the other societies, or what rules they had.

Well, sir?—I recollect the preses (I do not remember his name) put it to the vote, and that those for secrecy should hold up their right hand.

How was it decided?—It was agreed, with the exception of one man, for secrecy.

Who was he?—Mitchell, I think; but I could not be positive.

What was done next?—Each individual shook hands. There was a shake of hands in confidence, that nothing was to be revealed of any information given them by other societies; and that no one was to hurt any individual. Then there was an appointment of two individuals.

Do you remember who they were?—I was one. I do not remember the name of the other.

What were they to do?—To wait upon the Glasgow Reform Committee, to see what information they could give them.

Was that all that was done that night?—That is all that I recollect was done that evening.

When was the next meeting?—Before I go forward, I suspect, I should give what took place afterwards before any other meeting.

Court.—It is what you know that you are to tell us.—What I know took place as to myself. Before I got time to call upon the Glasgow Committee, there was one of the members called upon me.

Mr. Drummond.—What was his name?—Alexander Richmond. He called upon me, and asked, what was our Reform Committee about now? I told him, I was not an active member, or member of the committee. He said, they would be as lax, he supposed, as the Glasgow Committee. I told him, I was glad to see one of the committee, as I had been appointed to wait on them; and I asked what were they to do? Did they mean to petition? or what were they to do?

Go on to the next meeting?—It took place in M'Kinley's house. Those I was connected with—

Mr. Jeffrey.—There is no meeting in M'Kinley's libelled.

Mr. Drummond.—Do you remember a meeting upon the first of January?—Yes.

Where was that held?—In one Leggat's.

Where does Leggat live?—In Tradestown.

Was that meeting in the evening too?—Yes.

Can you tell us who were present?—Campbell, Dickson, M^cKinley.

This man? [pointing to the panel].—I remember seeing him there.

Do you remember any more of them?—Yes, one of the name of Somerville.

Court.—How many of them altogether?—A dozen, or perhaps more.

Mr. Drummond.—Who was preses of that meeting?—I think a man of the name of Pate. But as I was a little intoxicated that evening, I could not be positive upon that point or any other. I was the worse of drink.

Do you remember any thing about an oath at that meeting?—To the best of my recollection, there was a paper wrote that night, called a Bond of Union. I never heard it called an oath till after I was made a prisoder.

What was the nature of it?—I could not repeat it at present. It was about persevering in demanding a reform in parliament, or at least in petitioning for it.

Who read it?—I could not be positive. I believe it was read by one or two.

Do you remember any of the words.—If I heard them read perhaps I could.

You said it contained something about petitioning for a reform in parliament?—Yes. Please to read it, and I will say what I remember.

Was any particular species of reform wanted?—To obtain the elective franchise at the age of twenty-one.

Who were to get it?—Those, I suppose, who were to be considered worthy of it.

Was it for any particular description of persons, or was it a general thing?—I recollect nothing more than the elective franchise at the age of twenty-one.

Court.—Was it to every body?—Insanity was one thing, crime was one thing, that was to disqualify a man, I understood. If he was disqualified by crime he was to have no right.

Mr. Drummond.—Was insanity to disqualify him?—I could not be positive; but I believe it would do it. But I do not remember whether it was in the paper or not.

Do you remember any thing else of the nature of this bond of union?—Yes, there was one thing. There were none that were to come into this society that were to hurt any of their brethren in the same society.

Lord Hermand.—What do you mean by hurting?—By giving information.

Mr. Drummond.—Do you remember any thing more of the nature of the promise?—I could not say at present.

Was it said what was to happen if they broke their promise?—They were to be considered as traitors, or something to that purpose.

Court.—If they should give information?—Yes.

Mr. Drummond.—Was it said what was to be done to them?—Not that I remember in that paper.

In any other?—I saw one in court.

But at that meeting?—I recollect none. They were to be accounted traitors, and to be used as such.

Court.—To be used as such?—I understood so.

You remember it?—Yes; that is, to the best of my recollection. It is from a copy I saw of it next day that I speak.

Mr. Grant.—He was not sober at the meeting, and does not speak from his recollection of what took place then, but from his recollection of a paper which he saw afterwards.

Court.—Are you stating to us your recollection of what passed?—The last part, I observed to you, as to traitors, I do not remember at Leggat's, but from a paper I saw next day. There were other papers read, as a speech prepared for some reform-meeting. They were strangers to me, except a few that I just now named.

Lord Hermand.—Was any thing said at that meeting as to the means to be employed?—I never understood any of their means, but by that of persevering in petitioning.

Lord Justice Clerk.—You will understand we should have warned you, that, by being brought here as a witness, you cannot be brought to any trial for those transactions, and that you are now in no hazard if you speak the truth. Having been brought here as a witness, you are bound to speak out the whole truth, without regard to any obligation that may have been taken from you at any former time, or for any thing that was ever said to you.

Mr. Drummond.—You said you were a little the worse of liquor?—I was, before going to the meeting; and I became a little sick after I was there.

You were not so drunk you could not recollect what passed?—I was not insensible altogether, but it hurt my recollection.

Do you remember any thing further than what you told us passed at that meeting?—I recollect of the words, moral and physical force or strength, or something; moral or physical strength, I think.

Lord Hermand.—Was that in the bond?—I understood so. It is from the paper I am speaking.

Was it in the bond?—To the best of my recollection.

Lord Justice Clerk.—You heard it at Leggat's?—Yes.

Mr. Drummond.—How was this expression used in that bond? How was the moral strength to be applied?—Any explanation I

can give is, I understood it merely to mean, they were to use great efforts, by reasoning and all the means in their power, to effect a reform in parliament.

Court.—Repeat your words, sir?—To convince of the necessity of a reform in the Commons house of parliament.

Mr. Drummond.—How was the physical strength to be applied?—By the expression physical strength, I understood from the reasoning that took place, that I was bound to assist personally in preparing and forwarding petitions for the like object; or subscribing sums, as the case might require, subscribing as much money as possible, to defray the expenses of forwarding and preparing the petitions.

Lord Advocate.—You said you are not quite sure whether the words are physical force, or strength?—To the best of my recollection, strength.

Do you employ them as meaning the same thing?—I do not presume to be a judge in the language.

If it had been physical force, would you have—

[Lord Advocate interrupted in putting the question, by the opposite counsel objecting.]

Lord Advocate.—I am entitled to ask—

Witness.—They may be synonymous; but I am not a judge of language.

Did you understand subscribing money to be exerting physical strength?—I understood, that if my physical strength was not to be employed the other way, I was to subscribe; that, if I were not called upon to act personally, I was to pay those who were to act personally.

Did you see any paper taken that night out of any person's pocket? by the prisoner out of his pocket?—I could not say so.

Did you see him produce a paper?—Yes; I saw him have a paper in his hand.

Was that paper read?—I understood it was read.

Did you hear it read?—To the best of my recollection.

What was it about?—On the same subject, reform in parliament.

What did it say?—I could not be positive.

Do you remember nothing about it?—It was like the rest of them, about a reform in parliament.

Similar to the bond of union?—No; I do not think it was similar to it. I think it was longer than it, for one thing.

What was it about?—About a reform in parliament; but I am not able to recollect.

Did it contain any of the words you have spoken of?—I do not remember.

Any thing like them?—I could not say. There was a paper read by them before it, which was laid aside, and a new paper ordered to be read for the commencement. After

these two were read and laid aside, there was a long speech, five or six sheets, which had been prepared to be read, or which had actually been read, at some reform meeting.

Was the bond of union, which you told us of, approved of?—No; I do not think it was.

Any written that night?—I understood it was written.

Did you see it?—I do not recollect that I saw it; but I understood afterwards.

Was there any body present?—One M'Dowall Pate, I think, to the best of my recollection.

Did M'Dowall Pate read aloud in your hearing any paper?—He did read the bond of union, of which I have spoken.

And, what did the others do when it was read?—To the best of my recollection, there was some amendment proposed, which, I understood, was added afterwards; but, to the best of my recollection, I was out at the time.

Court.—Was it proposed in your hearing?—Yes.

In your presence read by Pate?—Yes.

Lord Advocate.—Did they sit still or rise after the reading?—They sat still, I believe.

You did not hear it read when they stood up?—Yes, but not at that time.

You came back again?—Yes.

You heard the paper read over as agreed to?—Not by the same individual, but another at the other end of the table; his name I do not know.

What then?—The preses ordered every one who approved of the paper to signify so, by holding up their right hand.

Do you know a person of the name of Edgar?—I have seen him once since I was made a prisoner.

Did you hear him read?—He read it once, and so did the preses. Both read it, and amendments were proposed. He who read it the third time sat beside Edgar, or where he sat before I went out.

You said they stood up; and each was to signify his approval of the bond of union by holding up his right hand?—I did so, and I understood each did so.

What did you do?—I gave my approval to it, by holding up my right hand.

What do you mean, by giving your approval?—I became a member of that society, bound as I have explained, I understood it.

How did the paper begin? To the best of my recollection, it began with "In the presence of Almighty God."

Did it end with the words "Almighty God"?—I do not positively remember; but, I believe it ended with "help me God," or something to that purpose.

Was there anything in it about brotherhood?—I do not remember.

Try to recollect whether there was any such word in it?—Yes; I dare say there was.

Brotherhood of affection?—Something like that.

[The lord advocate was interrupted by Mr. Clerk.]

Lord Advocate.—I must not be interrupted.

Mr. Clerk.—You must be interrupted when you put incompetent questions.

Lord Justice Clerk.—The Court will prevent questions from being put that are incompetent, but none such have been put. The question, Was there anything in the bond of union about brotherhood? is not incompetent.

Lord Advocate.—Did the witness add brotherhood of affection?—I think there was something of that kind.

Was there anything about confidence in it?—I could not say I recollect of that word.

Was there anything like it, or of the same meaning?—I could not say that I remember.

Was there anything about the punishment of death in it?—Not that I recollect of. There was, in one I saw after I was a prisoner.

Speak to what you heard that night, and the bond to which you became a member. Was there anything about equal representation in it?—Yes, I think there was; that was in it.

Anything about annual parliaments in it?—Yes.

You have said, persons were to be considered as traitors, in certain circumstances. Did this bond of union, or whatever it is, bear that any punishment should be inflicted on them?—Not that I remember. It held up as traitors, or detestable characters, those who should give information, upon what I have said.

You have said, that there was in this bond, or whatever it was, the words Almighty God, that it began with the name of God; What were the words before?—In presence of Almighty God.

Was there anything about hopes or fears, or rewards or punishments?—Yes; I think these were in it, hopes, fears, rewards, or punishments.

How applied?—That no man should become a traitor for the sake of reward; that no man should become a traitor to his brethren who composed the society.

Was the word steadfast in it?—Not that I remember.

You have stated, the words equal representation and annual parliaments, were in it, and also that the terms moral and physical strength were in it; was there not something also about endeavours?—Yes; endeavours to obtain all in our power.

How were the words I have now mentioned and annual parliaments, and universal suffrage, connected?—I do not remember at present the way they were connected. They were all in the same paper.

In the same paper, which began with Almighty God?—Yes.

Do you remember the word awful?—I do not remember of the word awful.

When you held up your hand in order to

testify your becoming bound to that society, and becoming a member—

Mr. Clerk.—You cannot be allowed to assume so from what the witness said.

Lord Advocate.—The assuming is not upon my part.

[Witness removed.]

Mr. Clerk.—As I understood the witness, the substance of what he said was, that they did stand up, and some held up their hands, and some held them down. Examine the witness again; for he has not yet said, that by holding up his hand he approved the oath.

Lord Justice Clerk.—The words I took down are,

[Here his lordship read from his notes.]

Mr. Jeffrey.—There was only one putting up of hands.

Lord Gillies.—My recollection concurs with your lordship's notes. And I suggest the propriety of learning from this witness, as I am not sure of it, whether he was speaking from what he remembers passed at Leggat's or from his recollection of what he saw the day following.

Lord Advocate.—I beg leave to state, that I wish to know nothing but what he does remember of that meeting.

[Witness returned.]

Lord Justice Clerk.—I wish to state, that the Court expects you to say distinctly, whether you are speaking as to the terms of the bond solely from your recollection of the meeting at Leggat's, and not from any recollection upon seeing any other paper?

Witness.—I think I have made the difference always to your lordships, by stating when it was from something else. All the answers have been as to Leggat's where I did not mention any other place.

Lord Advocate.—At the time you stood up and repeated these words, and held up your hand, and approved of the bond, and became bound as a member of the society, was M'Kinley present?—I believe he was, but I could not declare it upon oath.

Have you any doubt he was present, from your recollection?—He might be out at the time, but I have no doubt he was in. He was out, but I believe he was in at that time. I think so, but could not be positive.

Did you hear M'Kinley, or any body at that meeting, say from what the copy of that paper was taken?—I heard some of the meeting say, at one of the meetings, that it was similar to what was used in Ireland; and there was some alteration made on that account, as their object was only to employ legal means, and the other had different means in view. That

was the cause of the alteration, as I understood.

Do you remember whether the words, moral and physical strength, were in the first time the bond was read?—I do not remember but I understood they were in the last time.

Mr. Drummond.—Do you know Leggat himself?—I could not say I am acquainted with the man.

Was there any liquor at the meeting that night?—Yes.

Who brought it in?—The man of the house, I understood.

Could you know him, if you saw him?—I do not know but I should.

Do you see him in the Court?—Not at present.

[Three men were produced, one of whom was Leggat, whom he recognized.]

Were you at a meeting on the 4th of January?—Yes.

Where was it held?—In Neill Munn's.

Where is that?—In the new town of Glasgow. I could not name the street.

Who were present at that meeting?—There were these individuals, Gibson, Dickson, and M'Kinley.

What time did you go there?—Half-past nine o'clock, as near as I recollect. It might be twenty minutes from ten; but near that time. I think the 4th of January.

Who was preses at that meeting?—I think he who was preses the night before.

Pate, you mean?—Yes.

How long were you at that meeting?—About half an hour, I think.

What was done?—Some delegation was spoken of. M'Dowal Pate volunteered, I think, to go out to a place called Carmunnock, to see if some friends and acquaintances of his there would agree to form a society, similar to that then met, which commenced, I understood, the 1st of January.

Were any others present, than those who were present at the former meeting?—Yes, many who were strangers to me. I saw none initiated. That was the term generally used.

What do you mean by initiating?—Becoming members of the society, signifying their approbation of the bond.

Court.—What is your explanation of initiate?—Doing the same as I had acted myself upon the 1st of January, by holding up the right hand to that bond. That is what I understood by initiating.

You said, many of those others you did not know?—Yes. The room was pretty full, when I went in, not having room to sit.

Lord Hermand.—Not room to sit?

Mr. Drummond.—Initiate was the common word for the purpose you explained?—I heard it used.

Court.—Did you hear that word used at that meeting?—No.

Mr. Drummond.—Did this man, Pate, sit at the head of the table? or where did he sit?—He was standing, when I went in.

Had he any particular place as preses?—I could not say whether the side or head of the table was to him.

How do you know he was preses?—He was addressed as such.

Was there any vice-president, or secretary?—None that I recollect of.

No other officer, with any duty to perform?—None that evening, except the panel, who as collector received eighteen pence, which was over the reckoning.

Collector of what?—Collector to collect the reckoning, or for any thing that might occur.

What was to be done with the money?—I could not say. It was for the reckoning; and the meeting allowed him to keep what was over.

Court.—Was he called collector?—Yes. The 1st of January he was appointed. He, or the person who had the office, was to keep what was over, as some individual might be out of a sixpence, when he was called to pay the reckoning.

Lord Hermand.—How much had you to pay yourself?—I think sixteenpence.

Upon the 4th?—Yes.

Do you know whether any were present at that meeting who were not initiated?—I do not know. I heard no remarks made.

Lord Justice Clerk.—He said none were initiated at this meeting; but persons were present who were not at the meeting of the 1st of January.

Mr. Drummond.—Were you at any other meeting after that?—I believe I was at some other meeting. I do not remember particularly.

Were you at a meeting at Robertson's?—At Robertson's, I think, in the Gallowgate.

How long was Robertson's meeting after the other?—I could not positively say.

A week?—A week or two; but I do not positively recollect.

Was M'Kinley there?—I do not remember; but I think he was.

What was done?—I do not remember any thing particular that was done.

Did M'Kinley keep a copy of the bond of union?—I could not be so particular. I never saw him have it.

Did you ever hear him say he had it?—I never heard him say so.

Who were in Robertson's?—A number of persons. John Campbell was there; and Dickson and James Hood were there; and a number of others, whose names I do not remember.

Was Simpson there?—Never that I saw.

Was Finlayson there?—No.

Were you at the meeting at Hunter's?—Yes, upon the 22nd of February, when I was taken up; never before.

Before I have done with you, I wish to ask you to try to repeat, as far as your memory serves you, the way the bond was expressed. Begin.—In connection, I could not repeat it. There were annual parliaments, equal representation. There were these words—hopes, fears, rewards, and punishments, were in it; and there was something about brotherhood of affection. I could not take it in connection. These words were in it.

Lord *Hermund*.—Were any false names assumed by any one?—Yes; one by Gibson, and one by M'Kinley.

What did he call himself?—Brotherstone, or some such name. Gibson did so too; he called himself M'Kinley.

John M'Laclane cross-examined by
Mr. *Jeffrey*.

How many were at Munn's?—I could not say.

A hundred?—No.

Twenty or thirty?—I could not say.

Was it a large room the meeting occupied?—No.

Mr. *Jeffrey*.—I have no more questions.

Lord *Advocate*.—Were the words, declare and swear, in the bond?—The word declare was in it. It was at the beginning.

There were the words Almighty God, and then the word declare after them; how did the words run?—I know declare, was immediately after Almighty God; but how the words were used, I do not know.

Did you understand you used the word declare?—Yes; that it was in the bond.

Court.—Do you recollect any thing of the word swear in it?—Not that I recollect of; but, the word declare, I recollect.

Explain in what way the preses directed the holding up the hands?—The word were: All who approve of the bond, as it now stands, will signify the same by holding up their right hand.

This was after it was read?—Yes, after it was read the third time.

Attend to this question. Am I to understand, that by your complying with this question, that was put by the preses, by holding up your hand, you mean to convey to us, that that was being initiated?—Yes.

Do you recollect any thing more being said by the preses, either before or after he put that question about approval by the holding up of hands?—No, except his part in general conversation.

Am I to understand from you, that this proceeding, which took place at Leggat's was the only occasion when you saw this bond approved of, in the way you mention; or did you see it done at any other meeting?—At none of those meetings I was talking of.

Lord *Hermund*.—Did you ever see it done at any private meeting?

Counsel for the Panel.—That is not in the libel.

Mr. *Drummond*.—The gentlemen opposite have not attended to the indictment, in objecting to this question.

Lord *Advocate*.—Did you ever at any time see the question of approval put in the same way as at Leggat's?

[Objected to by Mr. *Clerk*.]

I never recollect it being put when the panel was present.

Lord *Advocate*.—I wish to ask the witness, whether he, at this moment, considers himself under the obligation of this bond of union?—By no means.

Peter Gibson called.

Mr. *Jeffrey*.—This man proposed to be adduced in evidence, is liable to convulsions and epileptic fits, which have so far weakened his memory, as to render him an unfit witness in such a case as the present. We can prove, by those who have known him from his infancy, that his evidence is not to be relied upon.

Lord *Advocate*.—The objection relates to epilepsy. It is quite common to men of the greatest talents. Julius Cæsar was liable to it. Buonaparte has been said to be liable to it, as well as another great military commander the Archduke Charles. Do our learned friends mean to say, that none of these personages could have given testimony in a court of justice? I apprehend this to be impossible. If so, your lordships cannot admit a proof of this allegation in the terms in which it is made.

Mr. *Jeffrey*.—It is in the knowledge of all mankind, that this disease impairs the faculties of the mind.

Lord *Advocate*.—Is it meant to aver that Gibson is *non compos mentis*?

Mr. *Clerk*.—We do not say he is an idiot; but we make an averment that he is subject to a well known disease, which weakens the intellects to an extraordinary degree. And suppose we should not be able to establish this fact to such an extent as to induce you not to receive his evidence at all, we may do it to such an extent as to satisfy your lordships and the jury, that the witness, if examinable, is yet entitled to very little credit or belief with a jury. Having said these few words, I need not trouble you with a long harangue, as I never heard such an objection opposed *in limine*.

Lord *Advocate*.—I merely wish to know what is asked to be proved, and I desire to see the allegation in writing upon the record.

John Clerk was called as a witness for the panel.

Lord Advocate.—Till this moment I was not aware of this evidence. The witness is not in the list of witnesses furnished by the prisoner. I do not object on this account to his evidence, though I might do so; but he is not in the list sent me even last night.

[Witness sworn.]

Mr. Cockburn.—What are you?—A cotton-spinner, in the summons I received.

What are you?—Sometimes I am designated by that name, and sometimes by the name of merchant.

Do you know Peter Gibson?—Yes, I do.

Was he ever in your employment?—Yes.

Mr. Jeffrey.—You know Peter Gibson?—I do.

Do you know whether he is in a sound or an infirm state of health?—He was for several years in my employment previous to the month of March. I was told he is subject to a falling sickness. I never saw him in it.

Have you occasion to know whether he is a person of entire understanding, or weak in his intellects?—I had occasion to give him orders in various things; and in any intercourse I had with him, we understood one another. He knew what was to be done or not.

Did you observe any defect in his understanding? What kind of matters had you to speak of to him?—In cotton mills there are many things of a mechanical nature to speak about.

Did he appear to you to have the ordinary memory and understanding of other men?—I always received the same kind of answers from him as from any of the other servants.

Peter Gibson sworn.—Examined by
Mr. Drummond.

Court.—Being adduced here as a witness, you can now suffer in no respect on account of any share you may have had in the proceedings in question, and you will tell all that you remember of them.

Witness.—I shall not tell what I do not remember.

Mr. Drummond.—Do you know this man?—I do.

What is his name?—Andrew M'Kinley.

Do you remember seeing him in Hugh Dickson's, in December last?—Yes.

Do you remember what other persons were at that meeting?—There were so many of them, and some I did not know.

Mention any of the names?—Hugh Dickson, John Campbell, John M'Lachlane, and I.

About how many might there be altogether at the meeting?—I think there might be about ten.

Was there any thing of the nature of an oath, obligation, or promise, at that meeting?

—A promise of secrecy by shake of the hand. Do not be too fast with me. I should wish so.

Can you describe to us how that promise of secrecy by shake of hand was done?—I can-

not describe the very way. I remember we all shook hands.

Did you stand up?—Upon our feet. We had been sitting; and we shook hands, that what we should get we should keep to ourselves.

All information?—All information whatsoever.

Do you remember a meeting some time after this at William Leggat's?—In Trades-town?

Yes?—I remember a meeting there.

At what time?—I think on the 1st of January.

Was M'Kinley at that meeting?—I think he was.

Court.—Are you positive he was?—I am pretty sure he was there.

Mr. Drummond.—Can you mention any other names?—I cannot recollect any more than I mentioned before.

Court.—Were there others?—Yes, strangers to me.

Mr. Drummond.—Was there any thing in the shape of oath, promise, or obligation, at that meeting?—As I had got spirits before going there, and while there, I do not recollect what was said or done, at the meeting of the first of January. I dare not say any thing concerning it. I am not very sure.

Do you mean to say you were so drunk that you could not remember?—I do not mean to say that I was drunk. There are different degrees in which persons may be the worse of liquor. I have seen some persons who cannot go, others who cannot speak, and some who can do both but do not afterwards recollect what happened in their presence.

Do you know what M'Kinley and the others did?—I remember coming home with them. We went into a public house at the Calton, where I fell asleep and continued so, I was told, for two hours.

Do you remember the approval of a bond or oath of union?—I do not remember.

Do you swear you do not remember?—I swear.

Do you say or swear you do not recollect any thing of an oath at that meeting?—I do not recollect any thing about it.

Do you recollect any thing about a bond of union at that meeting?—I saw one about the 2nd or 3rd of January.

Where?—In a man's hand in the Calton.

Was there any thing of that kind at the meeting?—I don't recollect of it.

Was there a person of the name of M'Dowall Pata at that meeting?—I was told he was.

Lord Advocate.—After you did know him, did you recollect having seen him there?—I do not remember.

Were you at a meeting at Neill Munn's upon the 4th of January?—Yes.

Were those persons present who had been at the former meetings?—Was M'Kinley there?

—I do not remember of seeing M'Kinley there. I was out some time. I do not recollect him.

Was he there?—I say he was not there.

Was Somerville there?—I do not recollect.

Was Hood there?—Yes.

Lord Justice Clerk.—He has said M'Kinley was not there, at least as far as he recollects.

Lord Advocate.—We must ascertain how far his memory serves him, and whether he be consistent in his statements.—Was Somerville there?—I wish to say nothing but what I recollect. I am not certain whether he was. I have a judge to answer at another day.

Was Hood there?—Yes, I say he was. I have not at all a good memory.

Hugh Dickson's house is off and on with your's?—A but and a ben; I am on the north end, and he is to the south of that in the middle.

You have said you were at a meeting in Hugh Dickson's part of the house, in which John Campbell and M'Kinley were present?—I said so, and I say it yet.

I believe your statement is perfectly true, and you said there was a promise of secrecy. Was any paper produced and laid before the meeting?—It might be the case, but I do not recollect.

Do you recollect of any paper being read in the form of an obligation of any sort?—No.

Any thing of the nature of a bond?—I never heard tell of a bond or any such thing.

An oath?—No.

A declaration?—No.

Did you hear any words repeated, in which the name of the Almighty was employed?—No.

Do you know Robertson's?—I know the place.

Were you there on the 15th of February?—You are leaving a long way now. I was there.

Was a person of the name of Finlayson there?—Yes, I think so.

Was M'Kinley there?—Yes.

I ask you upon your oath, whether an oath or obligation was administered to him there in presence of the panel at the bar?—I could say, and hold up my hand again, that there was no such thing, or I am very far mistaken, upon the 15th of February, in Robertson's.

Was there so any other day?—I never saw that man administer an oath to Finlayson.

Lord Advocate.—I wish the witness's deposition to be taken down in writing.

The following was taken down in writing by the Clerk of Court.

"And upon the motion of the lord advocate, the said Peter Gibson being interrogated, if at the meeting at Robertson's, on the 15th day of February last, at which he admits he was present, and where he depones the panel and one Finlayson also were, any oath was administered by the panel to the said Finlayson

in his presence, depones, That there was none. Interrogated, if, upon the above occasion, any oath was administered to Finlayson by an other person in the presence of M'Kinley, the panel? Depones, That there was no oath administered to Finlayson, or any person else at Robertson's on the 15th of February last. Interrogated, if any oath was administered by M'Kinley, or any body else in M'Kinley's presence, either to Finlayson or any body else, or any other day in the month of February last, at Robertson's? Depones, That he was present at a meeting at Robertson's on the 18th of February last, along with the panel M'Kinley and Finlayson, when he thinks there was an obligation taken; but whether it was more than a promise, or amounting to an oath, he does not recollect. Depones, That at the meeting at Leggat's on the 1st of January last, which was the only one he ever was present at in that house, he was in liquor, and if he took any obligation or oath there, he does not know of it, nor does he know of any other body having taking any there. Depones, That he never read any oath from a paper, because he cannot read writing; and all which he depones to be truth, as he shall answer to God."

(Signed) PETER GIBSON.

Who took the promise on the 18th of February?—All present.

Was there any writing?—No.

Was it read?—No.

Was it repeated?—I am not very certain.

What do you think?—I did not see those present take this obligation, and do not know whether it was any more than a promise.

How was it taken?—I think it was repeated. I do not recollect who repeated it.

Was it M'Kinley?—I do not recollect whether he or not.

You have said there was something of the nature of a promise. What did they promise to do?—There was a secret committee chosen to do nothing unknown to the central meeting. They bound themselves to do nothing but what was to be made known to the central meeting.

Lord Hermand.—Is that all you recollect?—That is all I recollect.

Lord Advocate.—Did you at any time, at any meeting at Robertson's, at Hugh Dickson's, at Leggat's, in the months of January or February, see any other oath taken than that you have now mentioned, in presence of the panel?—In Hugh Dickson's, there was a promise by shake of hand. On the first of January I do not remember what was said. And in Robertson's, on the 15th, there was no obligation at all.

I ask whether at any time of these two months, you heard any obligation taken?—I

do not remember seeing more than what I have told you of.

Did you take any yourself when M'Kinley was present?—No. Mind, I said I do not remember what passed on the 1st of January.

When sober, at any time, did you take an oath, or any obligation, when the prisoner was present?—No.

In the month of December, was there any other promise?—No.

In the house of Leggat, in December, was any other taken?—I never was there any other time. I can say no more.

Mr. Drummond.—Had you any other symptom of intoxication, than want of recollection?

Lord Advocate.—I want to know, whether you administered an oath, or read any thing in the nature of an obligation, at any of the houses or times mentioned, or tried to read any?—I never read one in my life, nor tried, for I cannot, which is a very good reason.

You limit your answer by saying, you did not see an oath administered, or did not read an oath? Did any person read it to you?—No person.

Was any oath repeated then?—There was never an oath repeated than what I have told you, up in Dickson's, on the 18th of February.

[The Counsel for the panel put no questions to this witness.]

Jury.—In consequence of what took place on the 18th, or at any other time, do you conceive yourself under an obligation to conceal the truth? In consequence of that promise, or oath, whether more solemn or not than you describe it, do you hold yourself at all influenced?—Not in the least. I gave up all that this present month.

James Finlayson sworn—Examined by *Mr. Drummond.*

Do you remember being at a meeting, in February, at Robertson's, in the Gallowgate?—Yes.

Were you at more than one?—I do not remember the dates. I was at two, at that man Robertson's.

At what date was the first?—Upon a Saturday.

What time of the year? The month of February?—I think it was February; a week before I was taken up.

How many were present at that meeting?—At the first?

Yes.—About twenty.

Can you name any of them?—Yes, the prisoner was there.

Do you remember the names of any of the rest?—Yes, Peter Gibson was there.

Do you know him?—Yes. That was the first time I ever saw Gibson.

Do you remember any others?—John Campbell was there.

Was Hood there?—Yes.

Was James Robertson there?—Yes, James is his name.

Was Somerville there?—Yes.

What is his first name?—Andrew.

Was Buchanan there?—Yes.

What is his first name?—I think, John.

Was there any preses of the meeting?—Robertson.

What was done at this meeting?—They chose a select committee.

What was that for?—I do not know what it was for. Positively I do not know what it was for.

Were you one of the committee chosen?—Yes.

Lord Advocate.—Do you remember, whether there were any oaths administered?—Yes, I do.

Recite them, and let us hear them if you can?—I have heard two. There was none at the first meeting.

Mr. Drummond.—Was anything more done, that you remember?—I never heard what the select committee was to do.

Was any thing more done at that meeting, by way of oaths?—Members brought money.

What was done with the money?—It was given to the treasurer.

Who was treasurer?—Hugh Cochrane. He was there.

Those present brought money?—Some of them. I did not see all of them.

Do you remember anything more?—There was a good deal said, but I do not remember it all. The most of the time was taken up in electing that committee.

Was the prisoner at the next meeting, on a Tuesday?—Yes.

Was any oath administered or taken at the next meeting?—Yes.

What took place at that meeting?—An oath was dictated to me, and I wrote it.

What was the nature of this oath?—I cannot repeat it; the whole matter of it: we were not to tell anybody what was to be done; either the names of the select committee, or anything they should do, for that select committee was not elected openly, but by ballot.

Was Gibson present when that oath was administered or taken?—Yes.

What was done with the oath?—I read it out.

All of the rest repeated it after you?—They all stood round the table, and I heard their voices repeating it after me.

You administered it to the rest?—I could not tell whether all did repeat after me.

Did Gibson?—I do not know; one or two may not have followed me, and I may not have noticed it.

Was Gibson present at the time?—Yes.

Was he one of those standing round the table?—Yes.

Lord Advocate.—Do you know if any other oath was taken there then, or in any other houses, in the month of January?—Not in that house.

No other in that house?—No.

[The Counsel for the panel objected to the questions now put, and the witness was withdrawn.]

Lord Advocate.—The indictment charges the oath to have been administered at a secret meeting held at the house of W. Robertson, innkeeper and stabler in Gallowgate of Glasgow, or elsewhere at Glasgow, or in the immediate vicinity thereof. The question I wish to put, is, whether or no, at any other place in Glasgow, within the three months, the witness heard any oath administered, at which the panel was present?

Mr. Jeffrey.—We must object to that question. If there be any use at all in the specification, without which the relevancy of the libel could not be sustained, it must be incompetent for the prosecutor, after the opportunity he has had for deliberation upon this indictment, to put such general questions to the witness. In this case, particularly, where there is a specification of only one meeting, at which this witness is stated to have been present (for he is not mentioned to have been present at Hunter's or Leggat's, or at any other meeting), such a general question cannot be allowed. You have that meeting specified in the indictment; and I submit, that, especially after the prosecutor has brought out that an oath was administered (but which is not very available to him), he cannot take an opportunity of putting a general question to the witness, whether an oath was administered in Glasgow, or the vicinity, at any time within the limitation of these months (for, as to Robertson's, the prosecutor has not confined himself there).

This indictment is divided into five heads, charging, as so many acts, the administration of the oath, at fixed dates and places, to a number of persons mentioned; and the advantage of specification would be lost, if a practice were to be introduced, that after naming a day and place in his charge, the prosecutor might, in his examination, go through many months and different places. The general expressions added in an indictment are intended for any casual slip or inaccuracy in what must be articulately stated, and not to give the prosecutor such a range of inquiry as he now wishes. To what is particularly charged and specified alone he must confine himself. Were it to be otherwise, we might be mocked with the appearance of a form of specification in an indictment, but we should be deprived of any benefit from it; and we might be condemned, in other hands, to suffer the perversion of all the forms considered indispensable to the safety of the subject. If this were to be permitted, any suspected places might be mentioned; and different places might be intentionally put in to oppress prisoners, by the most intolerable latitude of investigation. I submit, therefore, that the question proposed by the lord advocate cannot be put to the witness.

Mr. Grant.—In a case in which I attended

before you last year, where a carrier was tried for theft, the description of some of the stolen goods was in general words, "cotton twist, and other goods;" and you were all clearly of opinion, that the description was not sufficiently particular and specific.

Lord Advocate.—My learned friends are mistaken in supposing that the general description given in the indictment applies merely to the persons to whom the oath was administered. It applies also to the places; and your lordships have found it, by your interlocutor of relevancy, to be sufficiently specific. The question is, therefore, whether or not, your lordships having found this part of the indictment relevant, the prosecutor is to be narrowed, in the course of his investigation of the facts so found to be relevantly set forth, by the objection in question.

The dates when the oath is alleged to have been administered are given specifically in the indictment, as well as generally, within two months. Your lordships have already allowed questions to be put as to meetings any day in the months of January or February, without adhering merely to the precise days in the minute and specific statement of the previous clause of the indictment. Yet it is obvious, that the same objection now stated to putting a question as to meetings in other places than those specially mentioned, but referring to meetings at Glasgow or the vicinity thereof, as stated in the indictment might have been urged with the same propriety to a question general as to the time, and not referring generally to the dates condescended on. Now, what I now wish to prove, relates to a meeting at some place in Glasgow or its vicinity. Your lordships have found, that the charge in the indictment laid in those terms, and thus generally, is relevant; and you have actually allowed me to put questions equally general as the present, with respect to time. The same principle, I submit, ought to prevent my being narrowed in my inquiries as to place. This, as I understand it, is the simple statement of the case, and, I submit, your lordships would not have remitted the indictment to an assize without erasing that general statement from the indictment, if Mr. Jeffrey's present objection appeared to you to have been well-founded.

Lord Justice Clerk.—We certainly could not repel this objection without the most deliberate consideration. I took it for granted, there were four several occasions upon which, it is alleged, the oath was administered; and, although the general words in the indictment, founded upon by the lord advocate, did not, among the multiplicity of points for consideration, strike me before, now that the objection to them is pointed out, I have to state, that I think it is my duty to confine this examination to the specific charges in the indictment.

Lord Hermand.—I was a little misled at first, particularly as to the first charge. It says,

"At a secret meeting, held at the house of Hugh Dickson, then weaver in Abercromby-street, in Calton of Glasgow, or elsewhere at Glasgow, or in the immediate vicinity thereof, you, the said Andrew M'Kinley, did," &c. But, upon looking at it again, and comparing it with the statement of the next charge, it appears only a broad description of the habitation of the man. The words apply to a description of the residence of Dickson, as the next to a description of that of Leggat. The lord advocate questioned as to what happened at Robertson's. Under this indictment, he is entitled thus generally to establish the facts which have been found relevant.

Lords *Gillies*, *Pitmilly*, and *Reston*, intimated their agreement in opinion with the lord justice clerk.

[The witness was recalled.]

Lord Advocate.—Do you know Hugh Dickson?—Yes, I think so.

Do you know he has a house in Glasgow?

—No; I do not know that.

You never were in his house?—No.

In the house of William Leggat?—Not to my knowledge.

Do you know Neill Munn?—I have seen his sign, but was never in his house.

And, in none of the three months mentioned, you ever heard, in Robertson's house, any other oath?—There was never any other oath in that house, either on the Saturday or Tuesday.

Court.—In that house, upon any other day in that month, were you present when an oath was administered?—Yes; but I do not remember the day.

In that month of February?—I think it was.

Mr. Jeffrey.—This does not seem applicable to the particular charge against the panel.

Lord Advocate.—There is no necessity for proving that M'Kinley was present, in order to bring the charge home to him. He might be an accessory, though he was absent; and this is charged against him in the indictment. The witness says, there was an oath administered in Robertson's at a particular period; and I presume we are entitled to have this fact investigated, as we may be able to prove the panel's connection with the administration of this oath, and to establish against him the charge in the indictment. Perhaps I may not have fully comprehended the force or extent of my friend Mr. Jeffrey's objection; and before my friend the solicitor-general or myself submit any observations upon it, I hope he will state it more fully. I have given what appears to me a sufficient answer to the objection, as already brought forward.

[The witness was withdrawn.]

Mr. Jeffrey.—My objection is two-fold. In the case of accession to crimes committed, the first thing to be proved is the crime. This is

a different case. The charge is, that the panel at the bar was guilty of administering the oath specified in the indictment. It is true, by the other clause of the act of parliament, it is said, "That persons aiding and assisting at the administering of any such oath or engagement, as aforesaid, and persons causing any such oath or engagement to be administered, though not present at the administering thereof, shall be deemed principal offenders, and tried as such; and, on conviction thereof by due course of law, shall be adjudged guilty of felony, and shall suffer death as felons, without benefit of clergy, although the person or persons who actually administered such oath or engagement shall not have been tried or convicted." But it is necessary, that the fact to which this clause may apply should be specifically stated in the indictment, to give to the lord advocate the benefit of that special clause. Now, there is no specific allegation in any one of these charges, that the panel had caused the oath alleged to be administered.

Mr. Drummond.—That is clearly charged.

Mr. Clerk.—It is charged: you did so and so, or did so and so. If there is an allegation that he did cause the oath to be administered, what is it alleged that he particularly did at that house, and upon that occasion?

Lord Hermand.—That he administered the oath, or caused it to be administered, is libelled. But the whole act of parliament is libelled on; and the fourth clause is, [Here his lordship read the clause above quoted by Mr. Jeffrey.]

Lord Justice Clerk.—There is no doubt of it—look to the words of the act of parliament. The very words are repeated in this charge as to Robertson's.

Mr. Clerk.—But then it is not said in that charge, that when he caused the oath to be administered he was at any other place. Now, please attend. It may be true, that it is very well to allege the panel caused the oath to be administered; but then it is necessary to allege where. And the allegation in the libel is, that at that place he caused the oath charged to be administered, else no place whatever is assigned.

Lord Hermand.—The allegation is, that the oath was administered in that house. "Further, you the said Andrew M'Kinley did, upon the 5th day of February, 1817, or on one or other of the days of that month, or of January immediately preceding, at a secret meeting held at the house of John Robertson, then inn-keeper and stabler in Gallowgate of Glasgow, or elsewhere at Glasgow, or in the immediate vicinity thereof, wickedly, maliciously, and feloniously administer, or cause to be administered, or did aid and assist at the administering an oath or engagement." He may have caused the administering of the oath in that house, though he never entered it in his life.

Mr. Clerk.—I have one remark to make on the clause in the act of parliament. "And persons causing any such oath or engagement to be administered, though not present at the administering thereof, shall be deemed principal offenders, and shall be tried as such." It is not libelled that the panel caused the oath to be administered, though he was not present. On the contrary, it is alleged he was present, and so caused the administering of the oath in that place. Neither time nor place is assigned for the commission of the crime, unless this time and this place are assigned.

Mr. Solicitor General.—I am little disposed to trouble you, by prolonging this debate; but, with your lordships' permission, I beg to address a few words to you. It is necessary that the precise nature of the objection now made, should be recalled to mind, before the answer to it can be understood. The proper form of the objection seems to be this: is the public prosecutor entitled to prove the import of the oath, before proving the presence of the panel at the administration of it? The lord advocate asks of the witness what is the import of the oath which was taken or administered by the witness, or in the presence of the witness, and the objection is, he is not entitled to put this question, till the presence of the panel on that occasion be proved. I submit, that this is no objection at all, because it is competent for the public prosecutor to prove, by one set of witnesses, that the oath was administered at the time spoken to; and it is competent for him to prove, by other witnesses, that the panel was present. I know of no rule, in the law of evidence, which requires that the nature of the oath, and the presence of the panel, should be established at the same moment, or by the same witnesses. Much light has already been lost by the real or pretended failure of memory in witnesses. If the rule which the other side of the bar contend for were adopted, it would produce much inconvenience, and a total impossibility of proving a crime in any instance. In every criminal charge, the public prosecutor may prove the *corpus delicti*, before proving the connection of the panel with it; and he neither can be, nor ought to be controlled in the course and order of adducing the proof and conducting the case. In this part of his duty, he acts upon information, of which the Court and the prisoner neither can nor ought to be in possession. The objection by the panel rests on a principle leading directly to absurdity, and creating impracticability in business.

Mr. Jeffrey.—I submit that this position is untenable. The solicitor-general says, it is competent to prove the administration of the oath and its tenor, by one set of witnesses, and then by another set, to prove that the panel was present at or connected with the administration of the oath. If he has witnesses to prove that the panel was present, should not he first prove that? Upon what principle can

he be allowed to prove any thing about an oath, without proving the panel's connection with that oath? If the fact, as to an oath having been administered, be proved, without the prisoner's connection with it, would any thing be established against the prisoner? To prove the administration of an oath, or the terms of any oath, can here be of no avail, unless my client's connection with it be established. Without this, there is no evidence against the prisoner. A case might happen, that goods were carried off by one man, and found in the custody of another, and to such a case the principle of the solicitor-general might apply. But such a case is of a different kind from the present;—and if it is hinted that, perhaps, you will get nothing from Mr. Finlayson but the statement of an oath, and nothing about the prisoner,—how could you afterwards get any thing to connect the prisoner and the oath? At any rate, what disadvantage does the public prosecutor suffer, by being called upon first to prove the presence of the panel? while I have a material interest that the minds of the jury should not be prejudiced by any proof as to an oath extraneous to the case of the prisoner. Are they entitled to proceed so as to induce an impression against the prisoner of the most unfavourable nature, when, if they had begun at the end, to which they must go, and inquired as to the relation of the prisoner with the facts, they could have found no proof of any guilt attachable to him?

Lord Gillies.—This is a question of importance and difficulty. One objection has been stated, and two different answers have been made, and have given rise to two questions. The answer made by the lord advocate is, that the act of parliament entitles him, although M'Kinley may not have been present when the oath was administered, to prove that he caused its being administered. The solicitor-general again says, I may prove by another witness that the oath was administered by the agency of the panel. We are bound to consider both questions.

The lord advocate says, he is entitled to prove that the panel caused the oath to be administered, although he was not present when it was administered. That is the first and most important question. I think the lord advocate is not entitled to prove under this indictment that the panel was not present at the administering, but caused the administering of the oath here charged. You must have the time when—the place where—(though there may be some latitude as to both)—You must have the *species facti*, the *quo modo* set forth. The fact of causing, when absent, is different from causing when present. The fact that the panel caused the oath to be administered in his absence, is not set forth in the indictment; and I must appeal to my own recollection, and to that of every one who hears me, whether it entered into your contemplation that the lord advocate meant to

charge the causing without the panel's being present at the administering.

I am not talking of the major proposition—but, what I find defective is, that this *species facti*, now stated by the prosecutor, is set forth in no part of the minor proposition, and I was led to conclude, that all that the lord advocate meant to prove was, the administering of the oath, the panel being present at the time. If he meant to prove a *species facti* of a different kind, that the panel, though not present, caused the administering, that *species facti* should have been stated. And surely, according to Mr. Hume's doctrine of specification, the fact whether the panel was present or not at the administering of the oath should have been stated. Then, is the lord advocate entitled to bring an indictment without saying whether the panel was present at the administering, or a hundred miles off? His lordship's plea is competent, under the major, but not under the minor proposition. If you adopted this view of the lord advocate's, you would proceed on a *species facti*, taking for granted it is not necessary to state the *quo modo* of the *species facti* alleged to be committed.

As to the question raised by the solicitor-general's answer, it is of a different nature; and I do not know by what principle of law the public prosecutor can be hindered from proving the fact, and then the presence of the panel. But, I submit to the public prosecutor, that it is an inconvenient mode of proof. I do not mean to sustain the objection upon this ground; but, it can answer no purpose to prove, that any obligation was then administered or taken; for it cannot, and ought not to affect the prisoner if he was not present. And the only effect would be, to create a prejudice in the minds of the jury.

Lord Pitmilley.—My difficulty arises from what has been stated by the solicitor-general. The crime charged is, that the panel administered the oath, or caused it to be administered. It will be sufficient to prove that he administered the oath, or caused it to be administered—but then we must attend to the manner in which, the time when, the place where, he had done so, and I agree as to what has been said by lord Gillies and Mr. Clerk, that such particulars require to be specified. It is said in the indictment, that the panel did, “upon the 5th day of February, 1817, or on one or other of the days of that month, or of January immediately preceding, at a secret meeting held at the house of John Robertson,” &c. Whether he administered the oath, or caused it to be administered, it must be upon the 5th of February, or some day of that month, and at that secret meeting. It will not do, that he did it out of that meeting. I think we are bound strictly to fasten the prosecutor down, both to the time and place charged in the indictment. The proof must be as to February or January, and the panel must have been present.

I have some difficulty, from what the solicitor general stated; for, it is possible this man may have caused that oath to be administered, and perhaps in a room among a crowd, and a particular witness may not have known the panel had been the cause of the administering. I think it is not incompetent to the public prosecutor to prove as he was doing. If he fail, it will not go against the prisoner.

Lord Reston concurred.

Lord Justice Clerk.—I agree, that though it is competent to charge the causing the oath to be administered, as well as the administering of the oath, yet the same precision is required as to the *species facti* charged, and that time, place, and manner, should be particularly specified. But I own I am equally clear, that there is nothing that can prevent the public prosecutor from proving the nature of the oath, and the place and time when it was administered, and afterwards the panel's presence. I am, therefore, for allowing the question to be put.

[The witness was brought back.]

Lord Advocate.—What were the terms of the oath put that other night at Robertson's, not the oath of secrecy?—It was the prisoner who administered that oath.

What were the words?—It was the usual one. I cannot repeat it. It was about reform.

Do you remember how it began?—“In the awful presence of God.”

Was there any thing about swearing?—Yes.

What were the words?—I saw an oath, after I was put in prison, in a speech in parliament,* which was the same as that then administered.

You said the oath began, “In the awful presence of God.” Was there any thing about the word “swear”?—If I had not seen the oath in a newspaper, I could not have remembered a word of it.

Mr. Clerk made some inaudible observation.

Lord Advocate.—I cannot lose the benefit of this witness's testimony, and I have no wish to put any questions but with a view to get the truth from him of what he may know actually to have taken place. I should be happy to prevent those interruptions from the other side of the bar if your lordships would take the examination of this witness into your own hands.

Mr. Grant.—We can have no further questions to put after his last answer.

Lord Justice Clerk.—Till you saw the oath in a newspaper, you could not have repeated any part of it?—Nothing but the beginning. Before I went out, you asked me whether there was an administration of any other oath in

* Vide 35 Hans. Parl. Deb. 729.

these hours. I recollect, after I read out the oath in Robertson's, John Buchanan came in and I read it to him—the secret committee oath.

Lord *Hernand*.—Could you, without the newspaper, have recollected the latter part of the oath?—No.

[Witness withdrawn.]

Lord *Advocate*.—Although the witness read the oath in a newspaper, he did not swear the reading in the newspaper gave him any new impressions of it. The circumstance merely brought it to his recollection. He has expressly said the oath he then read was the same he heard administered in the meeting. Now, I beg leave to ask, what is there to prevent my laying a copy of the oath even now before him, and asking the witness whether that was the oath which was administered or no? I am not aware of any rule of law which should prevent my doing so, and it would in many cases be attended with the total loss of evidence if such a form of proceeding was held to be illegal. Few persons have the power of repeating from memory *verbatim* what they have read, although they can recollect it when laid before them, or read over to them; and it would be to render the statute under which this indictment is laid utterly inoperative, if it were held that it is incompetent to do more than ask the witnesses to repeat the *ipsissima verba* of the illegal oath charged to have been administered. Nothing, in effect, more happened in this case. Indeed, I apprehend not so much has been done, when the fact is merely that the witness saw accidentally in a newspaper the oath which he had heard before, and which brought, he deposes, its terms to his recollection. In fact, the question is not how he came to remember the oath, but does he now recollect it; and, I submit, it is of no consequence how that recollection was obtained (excepting always any undue proceeding on the part of the public prosecutor, which is not here alleged to have taken place), if it is clear and distinct.

This is a question of great importance indeed; and if your lordships sustain this objection, founded upon the witness having read the oath in a newspaper, it will go far to impede the course of justice. The same must in every case be sustained where the witness has read the narrative of the previous proceedings, before a magistrate, in the public prints, and an end would therefore be put to convictions in the most atrocious cases, which are generally those on which the most public investigations take place.

Mr. *Jeffrey*.—Nothing can be more fair or candid than the statement of the lord advocate, and I agree with him in an observation which he made, but it leads to a decision in my favour. If the lord advocate had been correct in stating, that, in consequence of an innocent accident, the Crown was to be deprived of any thing they would otherwise have had the benefit

of, that certainly would be an evil. But observe how the fact stands. The witness admits, that, in point of fact, if the trial had proceeded before he read the newspaper, or if he had never seen it, his memory would have been an entire blank as to the terms of the oath; and the question is, Can evidence from such a source be received in a court of justice?

What is it that a witness must speak to? The facts to which he was present; and if he states, that, as to these facts, he has no recollection of himself, and that the source from which he has derived any recollection of the circumstances, is a newspaper, this is no evidence at all.

I distinguish this case from one where a person may say, I had forgotten every thing but for a paper that I wrote myself, and, immediately upon reading it, my memory was refreshed, and I could now positively swear to the circumstances. But only see the difference here, and see the infinite incalculable danger to which a person might be exposed, particularly in a question with the Crown, as in the case of this panel, on a trial upon charges of a crime against the government if a witness were to be examined whose memory is gone, and who is totally unable to give testimony on the subject but from the accident of seeing an unauthentic account in a newspaper. Such witnesses will be subject to the delusions to which the human mind is liable, from anything bearing a resemblance to former objects of its knowledge, and will think that they have seen before what only bears a resemblance to what they had formerly known. Every one familiar with dreams must know, that in them the vividness of conception sometimes leaves an impression almost of reality on the mind. A witness, who has altogether forgotten the terms of an oath which he had once read, and afterwards reads in a newspaper an oath which appears of the same general description, will believe it to be the same oath; but if he be examined on the subject, all he can swear to will be the tenor and recollection of what he read in the newspaper. Even at this moment the witness swears he could not have recollected anything of the nature or terms of the oath but for the newspaper. A witness whose memory is revived by accident, may say, I now remember. But this witness says he could not have recollected but for the newspaper. He recalls the oath to his imagination rather than his memory. If he says he has no recollection but from the newspaper, he has no recollection but of the newspaper, a source of information which must exclude his evidence from being received. I submit, that, in a court of civil jurisdiction, evidence of this kind could not be received; and to allow evidence of this questionable sort to be taken in this court, and in such a case as the present, would be an example of the most dangerous nature.

Lord *Advocate*.—If the recollection of the witness depends altogether upon what he read

in the newspaper, I am not entitled to ask as to that recollection; but my question is, whether he can recollect the substance, not the terms of it, without the newspaper? I wish that to be further cleared up.

Lord Justice Clerk.—I think it right to state what I have taken down from the witness.—“That if he had not seen it in the newspapers he would not have remembered another word of it; and that, with the exception of the words in the beginning he has stated, he could not have repeated on his oath any part of it, had he not so seen it in the newspapers.” Under these circumstances, we are clear it would not be consistent with any rules of justice to have the witness examined further as to the terms of that oath, for he could only give his recollection from the newspaper.*

Lord Hermand.—In answer to my question, he said he could not without the newspaper have recollected the last part of the oath; so he cannot be examined further on the terms of the oath.

[Witness brought back.]

By whom was this oath administered at Robertson's?—By the prisoner.

Mr. Jeffery.—To whom was it administered?—To a man whom we met upon the road.

What other persons were present?—We went in with John Buchanan and this man, and John Buchanan went out to see another man, and then came in; and I am not sure whether the administering was done when he returned.

No other person?—No.

You do not know his name?—No.

Hugh Dickson sworn.—Examined by the *Lord Advocate.*

Do you know the house of William Leggat?—Yes, I have been in the house.

Who were all there?—A number of men.

Was the prisoner there?—Yes.

Was Peter Gibson there?—Yes.

Was M'Lachlane there?—Yes.

Was John Campbell there?—Yes.

Was any oath taken or administered at that meeting?—There was what we called a bond of union agreed among us at that meeting.

Can you repeat it?—No.

Can you tell the import of it?—Hearing it read, I could give an idea if it was like it. I never read the original.

Did you hear it read that night?—Yes.

Who read it?—I could not be certain of his name who read it.

Was it the prisoner?—No.

Was he present when it was read?—I think he was.

Did you take it? Was it given to you? Was it administered to you?—After it was agreed upon, it was taken by a vote. From

circumstances that occurred through that day, I could not say it was taken as an oath. It might be the case.

In what form was it taken?—They stood up and held up their hands. I do not remember any words used at the time.

Part of the time it was read, they held up their hands?—Yes.

What were the circumstances that happened through the day?—Being the first of January, I had got some liquor through the day.

Did it affect your memory?—I could not take upon me to speak with certainty as to that night.

Were you at Munn's?—On the 4th of January.

Was the prisoner there?—Yes.

Was the bond or oath read or administered there?—One man read it and held up his hand.

Who was he?—I never saw him before or since.

Was the prisoner present?—I do not know.

Who read it?—The man himself.

And held his hand up?—Yes.

Was the prisoner present?—I could not say. The room was too small, and some withdrew. He had been at the meeting, but I cannot tell whether he was present at the administering.

Lord Advocate.—Withdraw the witness. Having now concluded the most material part of the evidence upon which I had expected to establish the charges laid in the indictment, and finding that the witnesses have not given testimony corresponding to their previous examinations, and on which I was most thoroughly persuaded I should have convicted the panel, I deem it incumbent on me, in justice to your lordships, whose time is too precious to be needlessly wasted, not to take up a moment longer than necessary, by going into further evidence, which I believe to be still less conclusive, and without proceeding further in which, I am now satisfied the panel is entitled to a verdict of acquittal. However much, therefore, I must regret a result so different from what the truth of the case and public justice demanded, my consolation will be, that I have discharged my own duty in submitting the investigation to the judgment of a jury.

Mr. Jeffery.—After what has been stated, with so much candour and propriety, by his majesty's advocate, I should be to blame, if I were to dwell on the course of evidence which has been led. I should be infinitely to blame, if even any feeling of joy or triumph, excusable on such an occasion, should lead me to make any further observations. I shall be satisfied with that verdict which the good sense and right feeling of the jury shall determine upon; and, in whatever terms that verdict shall be contained, I am sure it will do ample justice to the whole case.

Lord Justice Clerk.—Gentlemen of the jury, I am happy to think, that, after what has taken place, the panel can expect nothing but an ac-

quittal. Your duty is now an extremely light and pleasant one, and very different from that which must have been expected when we commenced this trial. It is your duty to return such a verdict as you may think due to the case, taking all the circumstances into consideration, and to find the panel either Not Guilty, or the libel Not Proven.

I leave the case in your hands, you being possessed of all the facts as hitherto disclosed, and quite able to discriminate the circumstances of the evidence. And as to the verdict you return, it may be *viâ voce*, if you are unanimous; but, if not, we will sit with great pleasure to receive your verdict in writing, if you think it necessary to retire for that purpose.

The Jury, without retiring, unanimously found the libel Not Proven.

Lord Justice Clerk.—Gentlemen of the Jury, you are now discharged from your fatiguing duty; and I have to express my entire concurrence in the terms in which you have expressed your verdict.

Andrew M'Kinley,—in consequence of what has passed this day, relative to the charge exhibited against you, the jury have returned a verdict, all in one voice, finding the libel Not Proven. It is, therefore, the duty of the Court to assoilzie you *simpliciter*, and to dismiss you from that bar. But, Sir, I cannot help noticing, upon this occasion, that the verdict of your countrymen has not pronounced you to be Not Guilty of the charge that was exhibited against you; and I have already stated in your presence, that, in reference to the evidence, unsatisfactory and inconclusive as it was with respect to the full measure of your guilt, and looking, above all, to those declarations of yours, which were proved and made part of the evidence by a regular minute of admission by your counsel, I am decidedly of opinion the jury were bound to return the verdict now upon record—a verdict which leaves a mark upon your character, that nothing but a life of future rectitude in every respect can wipe off. You are now to be delivered from all risk of punishment for any degree of guilt you may have incurred relative to the transactions mentioned in the indictment; and I do hope and trust, that, after the full, fair, and impartial trial you have undergone, in which, while an attempt was made to establish the charge against you, you had the protection of the laws of your country, and the blessed safe-

guard of a jury of your countrymen to watch over your interests, you have now an entire and perfect conviction of the happiness and security under which the people of this country at present live, that you are now fully convinced the constitution of your country affords a complete safeguard to its subjects; and that there can be no risk of their lives or liberties being invaded, while the sanction of the law at all times extends its protection to them. I hope, therefore, when you return to the society in which you formerly lived, that, in whatever proceedings you may have formerly been engaged—whatever secret meetings you may have attended—whatever description of persons you may have been linked with by bonds of union, oaths, or engagements, you will from this time resolve to abstain from all such proceedings, and never render it even possible that any such charge should again be exhibited against you; that, on the contrary, you will use your utmost endeavours, by holding out the example of the protection of the law, which you have experienced, to convince them that they ought to unite with you in preserving unimpaired that happy constitution and government, under which the subjects of this country live;—that, in short, you will act the part of a good subject, justify the verdict in your favour, and prove, that, though you may have been misled by the designs perhaps of other men, you are not wicked in heart, and will live peaceably in time to come. I trust what I have now said will have a due effect, and I congratulate you upon the verdict you have received.

“The Lord Justice Clerk and Lords Commissioners of Justiciary, in respect of the foregoing verdict, assoilzie the panel *simpliciter*, and dismiss him from the bar.
(Signed) “D. BOYLE, J. P. D.”

Andrew M'Kinley.—I am not able to stand, from a weak state of body, to return my thanks in a long speech. But I wish to return my sincere thanks to your lordships for showing me such kindness;—to the gentlemen of the jury for their attention, and the verdict they have returned:—and to the Lord Advocate for his kind attention during my imprisonment;—and I wish publicly to declare, that I had all the liberty and indulgence that man could possibly have in such circumstances. My feelings of gratitude to my counsel are stronger than I can express.

Proceedings against JAMES M'EWAN, and others, at Glasgow.

Extract from the Record, containing Proceedings in the Circuit Court of Justiciary at Glasgow, against JAMES M'EWAN, M'DOWAL PATE, or PEAT, and JOHN CONNELTON, 23rd April, 1817, before Lords Hermand and Gillies.

The diet was then called of the criminal prosecution at the instance of his majesty's advocate, for his majesty's interest against James M'Ewan, now or lately carding-master at Humphrie's Mill, Gorbals of Glasgow; M'Dowal Pate, or Peat, now or lately weaver in Piccadilly-street, Anderston, in the vicinity of Glasgow; and John Connelton, now or lately cotton-spinner, in Calton of Glasgow, for the crime of administering unlawful oaths, as particularly mentioned in the indictment raised and pursued against them thereanent bearing:—

James M'Ewan, now or lately carding-master at Humphrie's Mill, Gorbals of Glasgow; M'Dowal Pate, or Peat, now or lately weaver in Piccadilly-street, Anderston, in the vicinity of Glasgow; and John Connelton, now or lately cotton-spinner in Calton of Glasgow: You are indicted and accused at the instance of Alexander Maconochie of Meadowbank, his majesty's advocate, for his majesty's interest: That albeit by an act passed in the fifty-second year of his present majesty's reign, intituled, "An act to render more effectual an act passed in the thirty-seventh year of his present majesty, for preventing the administering or taking unlawful oaths," it is *inter alia* enacted, "That every person who shall, in any manner or form whatsoever, administer, or cause to be administered, or be aiding or assisting at the administering of any oath or engagement, purporting or intending to bind the person taking the same to commit any treason, or murder, or any felony, punishable by law with death, shall, on conviction thereof by due course of law, be adjudged guilty of felony, and suffer death as a felony without benefit of clergy." And further by section fourth of said act, it is enacted, "That persons aiding and assisting at the administering of any such oath or engagement as aforesaid, and persons causing any such oath or engagement to be administered, though not present at the administering thereof, shall be deemed principal offenders, and shall be tried as such, and on conviction thereof by due course of law shall be adjudged guilty of felony, and shall suffer death as felons without benefit of clergy, although the person or persons who actually administered such oath or engagement, if any such there shall be, shall not have been tried or convicted." And further, by section sixth of the said act, it is enacted, "That any engagement or obligation whatsoever, in the nature of an oath, purporting or intending to bind the person taking the same to commit any treason, or

murder, or any felony punishable by law with death, shall be deemed an oath within the intent and meaning of this act; and in whatever form or manner the same shall be administered or taken, and whether the same shall be actually administered by any person or persons to any other person or persons, or taken by any other person or persons without any administration thereof by any other person or persons." Yet true it is and of verity, that you, the said James M'Ewan, M'Dowal Pate, or Peat, and John Connelton, are all and each, or one or other of you, guilty of the said crimes, or of one or more of them, actors or actor, or art and part; in so far as you the said James M'Ewan, M'Dowal Pate, or Peat, and John Connelton, having at Glasgow, and in the vicinity, thereof, in the course of the months of November and December, one thousand eight hundred and sixteen, and of January and February one thousand eight hundred and seventeen, wickedly, maliciously, and traitorously conspired and agreed, with other evil-disposed persons, to break and disturb the public peace, to change, subvert, and overthrow the government, and to excite, move, and raise insurrection and rebellion; and especially to hold and attend secret meetings for the purpose of obtaining annual parliaments and universal suffrage by unlawful and violent means, did then and there, all and each, or one or other of you, wickedly, maliciously, and traitorously administer, or cause to be administered, or did aid or assist at the administering, to a great number of persons an oath or engagement, or an obligation in the nature of an oath, in the following terms, or to the following purport:—"In awful presence of God, I, A. B. do voluntarily swear that I will persevere in my endeavouring to form a brotherhood of affection amongst Britons of every description, who are considered worthy of confidence, and that I will persevere in my endeavours to obtain for all the people in Great Britain and Ireland, not disqualified by crimes or insanity, the elective franchise at the age of 21, with free and equal representation, and annual parliaments; and that I will support the same to the utmost of my power, either by moral or physical strength, as the case may require. And I do further swear, that neither hopes, fears, rewards, or punishments shall induce me to inform on, or give evidence against any member or members, collectively or individually, for any act or expression done or made, in or out, in this or similar societies, under the punishment of death, to be inflicted on me by any member or members of such societies. So help me God, and keep me steadfast." Which oath or obligation did thus purport or intend to bind the persons taking the same to commit treason, by effecting by physical force

the subversion of the established government, laws, and constitution of this kingdom. And more particularly you, the said James M'Ewan, M'Dowal Pate, or Peat, and John Connelton, did, upon the first day of January one thousand eight hundred and seventeen, or on one or other of the days of that month, or of December immediately preceding, or of February immediately following, at a secret meeting, held for that and other unlawful purposes, in the house of William Leggat, change-keeper in king-street, Tradestown, in the vicinity of Glasgow, or elsewhere at Glasgow, or in the immediate vicinity thereof, all and each, or one or other of you, wickedly, maliciously, and traitorously administer, or cause to be administered, or did aid or assist at the administering of an oath or obligation in the terms above set forth, or to the same purport, to Peter Gibson, John M'Lachlane, John Campbell, and Hugh Dickson, all present prisoners in the Castle of Edinburgh, or to one or other of them, and to other persons, whose names are to the prosecutor unknown; the said oath or obligation thus binding or purporting to bind the persons taking the same to commit treason as said is. And further, (2.) you, the said James M'Ewan, M'Dowal Pate, or Peat, and John Connelton, did, upon the fourth day of January one thousand eight hundred and seventeen, or on one or other of the days of that month, or of December immediately preceding, or of February immediately following, at the house of Niel Munn, innkeeper and stabler in Ingram-street of Glasgow, or elsewhere at Glasgow, or in the immediate vicinity thereof, all and each, or one or other of you, wickedly, maliciously, and traitorously administer, or cause to be administered, or did aid or assist at the administering an oath or obligation in the terms above set forth, or to the same purport, to the said Peter Gibson, John M'Lachlane, John Campbell, and Hugh Dickson; also to James Hood, Andrew Somerville, John Buchanan, and James Robertson, all present prisoners in the Tolbooth of Glasgow, or to one or other of them, and to other persons, whose names are to the prosecutor unknown; the said oath or obligation, thus binding, or purporting to bind,

the persons taking the same to commit treason, as said is: And you, the said James M'Ewan, M'Dowal Pate, or Peat, and John Connelton, conscious of your guilt in the premises, have absconded and fled from justice. At least times and places foresaid, the said oath or engagement, or an oath or engagement to the same purport, was wickedly, and maliciously, and traitorously administered, or caused to be administered; and some persons did aid or assist at the administering thereof; And you, the said James M'Ewan, M'Dowal Pate or Peat, and John Connelton, are all and each, or one or other of you, guilty thereof, actors, or actor, or art and part. All which, or part thereof, being found proven by the verdict of an assize before the Lord Justice General, the Lord Justice Clerk, and Lords Commissioners of Justiciary, in a Circuit Court of Justiciary, to be holden by them, or any one or more of their number, within the burgh of Glasgow, in the month of April, in this present year one thousand eight hundred and seventeen, you the said James M'Ewan, M'Dowal Pate, or Peat, and John Connelton, ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming.

(Signed) H. HOME DRUMMOND, A. D.

And the said James M'Ewan, M'Dowal Pate or Peat, and John Connelton, having been all and each of them oftentimes called in open Court, and three times at the door of the Court-house, yet failed to appear,

The Lords HERMAND and GILLIES decern and adjudge the said James M'Ewan, M'Dowal Pate, or Peat, and John Connelton, all and each of them, to be outlaws and fugitives from his majesty's laws; and ordain them to be put to the horn, and their whole moveable goods and gear to be escheat and inbrought to his majesty's use, for not appearing this day and place, to underlie the law for the said crime of administering of unlawful oaths, as they who were lawfully summoned for that effect, several times called in open court, and thrice at the door of the Court-house, yet failed to appear, as said is.

(Signed)

AD. GILLIES. P.

701. Proceedings in the High Court of Justiciary at Edinburgh,
against NEIL DOUGLAS,* Universalist Preacher, for Sedi-
tion, May 26: 57 GEO. III. A. D. 1817.

HIGH COURT OF JUSTICIARY.

MAY 26, 1817.

Present.

Rt. Hon. David Boyle, Lord Justice Clerk.
Lord Hermand.
Lord Gillies.
Lord Pitmilley.
Lord Reston.

Counsel for the Crown.

James Wedderburn, Esq. Solicitor-General.
H. Home Drummond, Esq.
James Maconochie, Esq.
H. Warrender, W. S. Agent.

Counsel for Niel Douglas.

Francis Jeffrey, Esq.
J. P. Grant, Esq.
Henry Cockburn, Esq.
J. A. Murray, Esq.
David Ramsay W. S. Agent.

Lord Justice Clerk.—Neil Douglas,—
Attend to the indictment against you,
which is now to be read.

“Neil Douglas, Universalist preacher, residing in Stockwell street of the city of Glasgow, you are indicted and accused, at the instance of Alexander Maconochie of Meadowbank, his Majesty's advocate for his Majesty's interest: That albeit, by the laws of this and of every other well governed realm, sedition, more especially when committed by a minister, or by a person exercising the functions of a minister, in the performance of divine worship, is a crime of a heinous nature, and severely punishable: Yet true it is and of verity, that you the said Niel Douglas are guilty of the said crime, aggravated as aforesaid, actor, or art and part; In so far as, on the 9th day of March 1817, or on one or other of the days of that month, or of the months of February or January immediately preceding, in a house, hall or room, called the Andersonian Institution Class-room, situated in John street of the said city of Glasgow, you the said Niel Douglas, being a minister, or exercising the functions of a minister, did, in

* This panel was a member of the celebrated British convention in 1793, in the proceedings of which assembly he appears to have taken a very active part: See the minutes ante Vol. 2. p. 392, et seq.

the course of divine worship, wickedly, slanderously, falsely and seditiously utter, before crowded congregations, chiefly of the lower orders of the people, prayers, sermons, or declamations, containing wicked, slanderous, false and seditious assertions and remarks, to the disdain, reproach, and contempt of his Majesty, and of his Royal Highness the Prince Regent, in their persons as well as in their offices; and also to the disdain, reproach and contempt of the House of Commons, and of the administration of justice within the kingdom; all which wicked, slanderous, false and seditious assertions and remarks were calculated and intended to the hurt, prejudice and dishonour of his Majesty, and of his Royal Highness the Prince Regent, both in their persons and offices; to withdraw from the Government and legislature the confidence and affections of the people; and by engendering discord between the king and the people, to inflame the people with jealousy and hatred against the Government, and to fill the realm with trouble and dissension. More particularly, time and place aforesaid, you the said Niel Douglas did wickedly, slanderously, falsely and seditiously, in the course of the prayers, sermons or declamations uttered by you, assert and draw a parallel between his Majesty and Nebuchadnezzar king of Babylon, remarking and insinuating that, like the said king of Babylon, his Majesty was driven from the society of men for infidelity and corruption: And you, then and there, did further wickedly, slanderously, falsely and seditiously assert, that his Royal Highness the Prince Regent was a poor infatuated wretch, or a poor infatuated devotee of Bacchus, or use expressions of similar import: And you, then and there, did wickedly, slanderously, falsely and seditiously assert and draw a parallel between his Royal Highness the Prince Regent and Belshazzar king of Babylon; remarking and insinuating that his Royal Highness the Prince Regent, like the said king of Babylon, had not taken warning from the example of his father; and that a fate similar to that of the said king of Babylon awaited his Royal Highness the Prince Regent, if he did not amend his ways, and listen to the voice of his people: And further, time and place aforesaid, you did wickedly, slanderously, falsely and seditiously assert that the House of Commons was corrupt and

that the members thereof were thieves and robbers; that seats in the said House of Parliament were sold like bullocks in a market, or use expressions of similar import: And further, time and place foresaid, you did wickedly, slanderously, falsely and seditiously assert, that the laws were not justly administered within this kingdom; and that the subjects of his Majesty were condemned without trial, and without evidence, or use expressions of similar import. And you the said Neil Douglas having been apprehended and taken before Robert Hamilton, Esquire, Sheriff-depute of the county of Lanark, did, in his presence, at Glasgow, emit three several declarations, dated the 15th, 17th and 18th days of March 1817: Which declarations being to be used in evidence against you, will be lodged in due time in the hands of the clerk of the High Court of Justiciary, before which you are to be tried, that you may have an opportunity of seeing the same. At least, time and place foresaid, in the course of divine worship, prayers, sermons or declamations were wickedly, slanderously, falsely and seditiously uttered containing the foresaid wicked, slanderous, false and seditious assertions, remarks and insinuations, by a person who was a minister, or who exercised the functions of a minister; and you the said Niel Douglas are guilty thereof, actor, or art and part. All which, or part thereof, being found proven by the verdict of an assize, before the lord Justice-General, the lord Justice Clerk, and lords commissioners of Justiciary, you the said Niel Douglas ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming. James Wedderburn, A. D."

LIST OF WITNESSES.

Robert Hamilton, Esq. Sheriff-depute of the county of Lanark.
James Thomson, clerk to John Drysdale, sheriff-clerk of Lanarkshire.
George Duncan, sheriff officer in Glasgow.
John Leslie, clerk to the said John Drysdale.
Duncan Clark, Glasgow.
Robert Alexander, tobacconist, Glasgow.
Matthew Lowdon, tailor there.
John Maccallum, town-officer there.
Alexander Taylor, town-officer there.
James Pirrie, town-officer there.
Hugh Paterson, labourer there.
Alexander Gollan, now or formerly residing in Tobago Street, Glasgow.
William Fergusson there.
James Waddell, surgeon there.
James Muir, physician there.
John Waddell, tobacconist there.

LIST OF ASSIZE.

County of Edinburgh.
William Bruce of Alderston.

Archibald Cochran of Ashkirk.
James Gordon, merchant in Dalkeith.
George Rae, weaver there.
Simon Watterston, saddler there.
Thomas Dodds, farmer, Edgelaw.
James Boak, farmer, Broachrigg.

County of Haddington.

William Aitchison of Drummole.
John Fowler of Windygowll.
Robert Howden, farmer, Chapel.
John Burn, farmer, Kingston.
John Howden, do. Congalton Mains.

County of Linlithgow.

James Joseph Hope Vere of Craigiehall.
James Dundas of Dundas.
Robert Angus, residing at Cowdenhill.
James Trotter, farmer at Newton, parish of Abercorn.
John Nimmo, farmer there.

City of Edinburgh.

Peter Begbie, smith in Edinburgh.
Patrick Campbell, hotel-keeper there.
William Blackwood, bookseller there.
James Macgregor, hotel-keeper there.
James White, bookseller there.
Ebenezer Gilchrist, banker there.
John Lyall, wine-merchant there.
Thomas Storrar, baker there.
John Mackay, post-master there.
David Macgibbon, builder there.
John Rochad, musical-instrument maker there.
Andrew Brown, founder there.
Robert White, pewterer there.
William Peddie, leather-merchant there.
Archibald Lumsdaine, merchant there.
William Hogg, cloth-merchant there.
Alexander Greig, accountant there.
William Waddell, printer there.
John Swin. Simpson, silver-plater there.
John Fairbairn, bookseller there.
Robert Boyd, clothier there.

Town of Leith.

James Geddes, Hope Street, Leith.
Henry Paterson, builder there.
Robert Bayne, grocer in Leith.
James Bell, merchant there.
Robert Bruce, manager for the London and Edinburgh Shipping Company at Leith.
John Paul, seed merchant in Leith.
Robert Wilson, merchant there.

D. BOYLE.
AD. GILLIES.
DAVID DOUGLAS.

Lord Justice Clerk.—Niel Douglas, What do you say to this indictment?—are you guilty or not guilty?

Panel.—Not Guilty, my lord:

Lord Justice Clerk.—Have the counsel for the panel any objections to the relevancy of this indictment?

Mr. Jeffrey.—No, my lord. We have given in defences for the prisoner.

DEFENCES for the Rev. Niel Douglas to the indictment against him at the instance of his Majesty's advocate for his Majesty's interest.

The panel denies that he is guilty of the crime charged in the indictment, or that he ever made use of the expressions there imputed to him, or of any similar expressions. On the contrary, he avers and offers to prove, that he has always spoken with the utmost respect of the Sovereign, and the Houses of Parliament; has on all occasions extolled the laws of the country, and exhorted all his hearers to avoid and discountenance every sort of tumult or disorder.

Under protestation to add and eik.

F. JEFFREY.

LIST OF EXCULPATORY WITNESSES.

William Warrell, weaver in Marlborough-street, Calton of Glasgow.

Allan Campbell, teacher, Dempster-street, Glasgow.

David Young, weaver, Barrack-street, Calton.

John Rentoul, candle-maker, Argyle-street, Glasgow.

William Nisbet, weaver, High-street, Glasgow.

John Chalmers, weaver, Carrick-street, Brownfield, Glasgow.

Rev. James Smith, St. Patrick-square, Edinburgh.

Rev. James Donaldson, head of Blackfriars'-wynd, Edinburgh.

Lord Justice Clerk.—Your lordships have seen this indictment, and have heard the defences for the prisoner read; and though no objections to the relevancy of the indictment have been stated by his counsel, yet if, in reference to the sufficiency of the facts charged in the minor proposition to establish the crime charged in the major, or in reference to any other circumstance in the indictment, any objections to the relevancy have occurred to your lordships, you will now state them to the Court.

Lord Hermand.—I should be happy to find that the charge of employing such language regarding the sovereign of this country as that stated in the indictment should not be brought home to any subject. Never was a sovereign less deserving of such imputations. The indictment is unquestionably relevant.

Lord Gillies.—I see no objections to the relevancy of this indictment.

Lord Justice Clerk.—The usual interlocutor finding the relevancy of the indictment falls now to be pronounced. Niel Douglas: attend to the interlocutor of relevancy.

"The Lord Justice Clerk and Lords Commissioners of Justiciary having considered the indictment raised and pursued at the instance of

his majesty's advocate, for his majesty's interest, against Niel Douglas, panel, find the same relevant to infer the pains of law; but allow the panel to prove all facts and circumstances that may tend to exculpate him, or alleviate his guilt, and remit the panel, with the indictment as found relevant, to the knowledge of an assize.

"D. BOYLE, J. P. D."

Lord Justice Clerk.—The question for your lordships' determination now is, whether you should proceed, at this late hour, to the trial of the prisoner.

Lord Advocate.—If agreeable to your lordships, I should wish that the trial should now proceed, in order to save trouble to the jury and the witnesses who are in attendance.

Mr. Jeffrey.—It is our wish on the part of the prisoner that the trial should go on now, as he has brought witnesses from Glasgow; and to delay the trial would occasion additional expense and trouble. So far from objecting that the trial should go on at present, it is our interest and desire that it should proceed now; and, for my own part, I have no wish for delay on any personal considerations.

Lord Hermand.—I wish to get quit of the monstrous load of business which we have at present. Two other important cases at present remain to be disposed of.

Lord Pitmilley.—If we proceed now it would prove a serious interference with our other duties.

Lord Justice Clerk.—It would be most painful to me to allow any thing to interfere with the interest of the prisoner; and therefore, although inconvenient to us in some respects, we shall proceed with the trial.

The following persons were then named as jurymen.

Thomas Dodds, farmer at Edgelaw.

James Boak, farmer, Broachrigg.

William Aitchison of Drummore.

John Fowler of Windygowl.

Robert Howden, farmer, Chapel.

James Dundas of Dundas.

James Trotter, farmer at Newton.

William Blackwood, bookseller, Edinburgh.

Eben. Gilchrist, banker there.

John Lyall, wine-merchant, Edinburgh.

John Mackay, post-master there.

William Waddel, printer there.

James Bell, merchant in Leith.

Robert Bruce, manager of the London and Edinburgh Shipping Company at Leith.

Robert Wilson, merchant there.

EVIDENCE FOR THE CROWN.

Alexander Gollan sworn.—Examined by
Mr. Maconochie.

Mr. Grant.—I object to this witness, as we have had no opportunity of knowing any thing

about him. It is not said when, or in what capacity he resided in Tobago-street, Carlton of Glasgow. Another objection which we state, is, that we understand his name is Gollan; while the name in the list of witnesses annexed to the indictment is Gollan. I need not take up the time of the Court in showing that these objections are sufficient to entitle us to demand that the evidence of this witness be rejected.

Court.—What is your name?—Gollan.

Mr. Maconochie.—I do not think it necessary to state any thing in answer to the other objection.

Court.—Where do you live?—Tobago-street, Carlton.

Mr. Maconochie.—What is your profession?—I am a weaver.

Were you one of the patrol of the county of Lanark?—I was one of the patrol.

Have you been in the habit, upon any occasion, of attending Mr. Douglas's sermons?—Yes, I have heard him once or twice.

When?—I do not remember the time; in the month of January or February last.

Where was his meeting?—In John-street, I think.

In the Andersonian Institution?—Yes.

Was the meeting crowded?—Yes.

What sort of persons attended it chiefly?—They were mostly of the lower orders.

At what time of the evening was the meeting?—From six to eight.

On what day of the week?—Sunday.

Can you speak more particularly to the title?—I cannot say more particularly.

Did any thing strike you particularly as to Mr. Douglas's sermons? Did he introduce politics into them?—Yes.

That is he sitting there?—Yes.

Do you remember any of the texts he preached from?—From the fifth chapter of Daniel.

Do you remember his entering into any discussion about the king?—Some little, but I remember but very little of it now.

Tell what you recollect of it?—He made a simile of George the third to Nebuchadnezzar, and of the prince regent to Belshazzar, and insisted that the prince represented the latter in not paying much attention to what had happened to kings; and that the king of France had not acted agreeably to the voice of the people, and brought himself to the block on that account. And, enlarging in his discourse, he told the people it was necessary to have a reform, and he set forth, that the only means for getting it was by petitioning, and that he had no doubt that by petitioning it would be obtained.

Do you remember any thing further?—I do not remember much more of his sermons. In his prayer, he prayed that the lord might turn the heart of the prince, calling him infatuated, that he might disperse the corrupt counsellors

that were about him, and place wise and faithful counsellors around his throne.

Do you remember any thing further he said in his prayer, or in his sermon?—This was in his lecture; that agreeably to the situation every person is placed in, he is more or less accountable for the sins he commits; and if the prince, in particular, be guilty of not listening to the voice of his people, he would endure punishment for a series of years.

Do you remember any thing more?—I cannot say that I do at the present time.

Do you remember if there was any thing said about the House of Commons?—There might, but I do not remember at the present time.

Did he say any thing about the Habeas Corpus act?—He gave a statement of the suspension of it, how far it ran; something with regard to that.

What did he say?—I do not remember.

Do you remember the substance of what he said?—No, I do not remember.

Did he approve of the suspension of the Habeas Corpus act?—He found fault with it.

Did he say any thing about those that passed the act suspending the Habeas Corpus act?—No, I do not remember.

Do you remember if he talked at all about the victory of Waterloo?

Mr. Jeffrey.—I object to that question.

Solicitor General.—There can be no doubt, that, by the practice of the Court, the question may be put to the witness. The general charge against the panel is, that he uttered certain discourses of a seditious nature and tendency; and, in the minor proposition, there is a specification of the particulars from which the sedition charged is to be made out. We are not restricted in our proof to the particular words charged in the indictment, but may prove generally whether in his discourses his expressions were wicked or seditious. There may be many circumstances of an apparently trifling nature, from which the character of these discourses may be proved to be either innocent or seditious. I aver that the answer to the question which has been put will throw most important light on this matter. In the case of Muir, a question of this sort occurred; and some of your lordships will recollect, that an objection was made to questions being put regarding any expressions but those contained in the libel; and the Court did allow the prosecutor to enter into a proof of circumstances not mentioned in the libel.*

[He read the debate from the printed trial.]

There was thus a long debate on the subject; and the prosecutor was found entitled to proceed in his proof. Here the same rule should be adopted.

* Muir's Case, 2 How. Mod. St. Tr. 139, 140; 148 et seq.

Mr. Jeffrey.—I certainly am not disposed to take up the time of the Court by a speech in support of my objection to this question. I am far from arguing, that the public prosecutor is to be tied down to the very words mentioned in the minor proposition; but if there is any meaning at all in requiring a specific statement in the minor proposition, he must be limited to matters of the same class or description with those which are charged. He is not entitled, under the general charge of sedition, to inquire whether the prisoner uttered any thing indecorous, unpatriotic, or improper, at the time libelled. What are the terms of the charge here? That the prisoner "did, in the course of divine worship, wickedly, slanderously, falsely, and seditiously utter, before crowded congregations, chiefly of the lower orders of the people, prayers, sermons, or declamations, containing wicked, slanderous, false, and seditious assertions and remarks, to the disdain, reproach, and contempt of *his majesty*, and of *his royal highness the prince regent*, in their persons as well as in their offices; and also to the disdain, reproach, and contempt of *the House of Commons*, and of *the administration of justice* within the kingdom; all which wicked, slanderous, false, and seditious assertions and remarks, were calculated and intended to the hurt, prejudice, and dishonour of his majesty, and of his royal highness the prince regent, both in their persons and offices; to withdraw from the government and legislature the confidence and affections of the people; and, by engendering discord between the king and the people, to inflame the people with jealousy and hatred against the government, and to fill the realm with trouble and dissension." Now, what possible connection can there be between the proof of any of these charges, and the prisoner's opinion of the battle of Waterloo? Supposing a person should have the singularity, the want of feeling, or the whimsicality of thinking the victory at Waterloo disreputable to our reputation or glory, is a prejudice to be excited against him in a trial for sedition or other crime, because he feels so little for his country as to have such sentiments? What is it to the support of this indictment, supposing the prisoner had such peculiarity of thinking? I am not now to argue whether the expression of such sentiments would amount to the charge of sedition; for even if that were the case, and if such expressions had been specified in the indictment, you could not have allowed a proof of them, as they could not infer the particular sorts of sedition specified in the minor proposition. Particular charges are stated in the indictment, and are you to allow a party to be prejudiced by having such questions, as that to which I now object,—I do not say answered,—but put to a witness at all? I do not care for the answers; but to allow the prosecutor to take such a course, would be attended with bad consequences in worse times, and in other trials for crimes. At all

events, the question is obviously quite irrelevant, and not admissible in this trial.

Lord Gillies.—What is the particular question objected to?

Mr. Jeffrey.—"Do you remember if he talked at all about the victory of Waterloo?"

Lord Hermand.—I cannot conceive what the victory of Waterloo, or the Habeas Corpus act, has to do with this indictment. It is divided into three heads. There are charged, 1st, Seditious assertions and remarks against his majesty; 2nd, Against his royal highness the prince regent; and 3rd, Against the House of Commons and the courts of justice. You have charged Sedition under three heads; and you must keep to these heads.

Lord Gillies.—I concur in the opinion which has been given. As to the battle of Waterloo, I should think it strange to find any difference among people in this country about it; but whatever the prisoner's opinion may be as to that victory, there is nothing relative to it in the indictment. The sedition first charged regards his majesty. Then a charge is made regarding his royal highness the prince regent, that the prisoner used the expressions libelled, or some of similar import. Has the battle of Waterloo any connexion with these charges? Then it is stated in the indictment, that the panel seditiously asserted that the House of Commons was corrupt: that the members thereof were thieves and robbers; that seats in the said House of Parliament were sold like bullocks in a market,—or that he used expressions of similar import. What has the battle of Waterloo to do with this charge? The same observation applies in considering the remaining charge, which represents the panel as having asserted that the subjects of his majesty were condemned without trial, and without evidence. None of his majesty's subjects were brought to any other trial at the battle of Waterloo than that of skill and valour,—a trial which they passed triumphantly.

Lord Pitmilky.—I am of the same opinion with the judges who have spoken.

Lord Justice Clerk.—I also am of the same opinion. I am not giving an opinion on the point, whether, if the indictment had charged, that the sermon contained passages, manifesting generally the disaffected and seditious sentiments of the panel, such a question as that put for the crown would or would not have been relevant. Here the general charge is sedition; but particulars are condescended on, of such a kind as do not allow the going into such questions as that objected to, regarding the battle of Waterloo.

I have heard that there is an individual, whom I need not mention, who thinks that the duke of Wellington has no merit whatever in any of his campaigns or the battles which he has fought,—but could this individual, for such singularity of thinking, be charged with sedition, such as is imputed to this panel?

Mr. *Macdonald*.—You said, that in speaking of the king and the prince, he made a simile between them and Nebuchadnezzar and Belshazzar; did he say any thing else as to the king personally?—He said, that, in his opinion, a common executioner has a more honourable situation than a king, as an executioner is guilty of taking only a few lives in the course of a year, whereas a king takes thousands.

Did he say any thing about Bacchus?—He said the prince was a worshipper of Bacchus.

Court.—What did he call him? how did he designate him?—I think the terms used were, him and his Bacchanalian Court. I do not remember particularly in what way the term was used.

Mr. *Macdonald*.—Did he say any thing about the prince and Belshazzar?—I do not remember.

Did he say any thing about thieves and robbers?—I do not remember.

Was he very violent, or did he speak with great composure?—He spoke uncommonly quick, so fast, indeed, that I could not take up what he said.

Are you one of Mr. Douglas's hearers?—No.

What took you to hear him?—I had heard that he preached universal redemption for mankind, and I wanted to hear him on that subject.

Mr. *Drummond*.—You said he drew a simile between those personages in the Old Testament and the king and the prince regent. Is that to say that he compared the king and the prince regent to them?—Yes.

In what respect did he say they resembled one another?—He said the king's infirmity rendered him incapable of discharging his duty, as Nebuchadnezzar was thrown from the society of men.

Did he give any reason for stating this?—I do not remember; but it was in that manner he enlarged in the discourse.

What conclusion did he draw? for what purpose did he state what you have mentioned?—I cannot recollect.

How did he make out that the two were like one another?—I have mentioned that already. Nebuchadnezzar had been driven from the society of men; and they both had been driven from the society of men.

Did he say why they had been driven?—I said he spoke so fast, I could not hear the fifth part of what he said.

Give me the fifth part, and I shall be satisfied?—I cannot proceed farther as to what he said; for I do not now remember, or did not follow him at the time.

Did he or not give the reason, why Nebuchadnezzar was driven from the society of men?—I do not remember whether he did or not.

Did he give any reason why the king was

driven from the society of men? I desire you to recollect, and to state what you know about that?—It was in making a simile between the common executioner, and the king being the instrument of taking so many lives. He said God had punished him for his unjust doings towards the nation.

You said something about an executioner; what was that?—I told that deliberately. He said, the situation of an executioner was honourable compared with that of a king.

Whom did you understand by him, when the panel spoke of unjust doings, Nebuchadnezzar or the king?—With regard to God punishing him, I understood he meant George the Third.

He compared the prince regent to Belshazzar?—Yes.

In what particulars did he say they resembled one another?—In comparing the two, he said, that, although Belshazzar had seen his father thrown from the society of men, and made to eat with the beasts of the field, he drank out of vessels forbidden, and the prince regent was in the same manner, not lending an ear to the prayers and supplications of his people.

And did he say what was to happen to him from not lending an ear to them?—Yes, that God would undoubtedly punish him for it afterwards.

You said that he recommended petitioning?—Yes.

For what?—For a reform in parliament.

And what did he recommend to be done in order to promote the petitions?—He said, that by petitioning, and petitioning, and petitioning again, and again, and again, their petitions would perhaps be heard and granted.

Do you remember any thing else he said about it?—No, I do not remember any thing else just now.

Did he take any illustration from the Scriptures to explain how they should proceed upon that occasion?—I do not remember.

Did he say what they should do in case of their petitions not being listened to?—I do not remember.

I wish you would try?—I cannot recollect.

Did he say any thing about the House of Commons?—He spoke of corruption having crept in among them, in his prayers, sermon, and lecture.

Then he repeated at different times that corruption had crept in among them? Did he give any example of the corruption? Did he particularize any measure as an illustration of corruption?—I do not remember.

Did he say any thing about the suspension of the Habeas Corpus act?—He mentioned his not approving of it, but I do not remember what he said.

I wish to ask you, if the general nature of the prayer and sermon was religious or political?—Political.

And what was the general political tendency of the discourse? [This question was objected

to, and Mr. Drummond said he had no wish to press it.]

Alexander Gollan cross-examined by
Mr. Jeffrey.

You mentioned, Mr. Gollan, that you went there chiefly to hear his opinion upon a particular point?—Yes.

Had you heard any thing particular about his political opinions?—Yes. There was a general talk about him.

Had you been desired by any one to go to hear his political opinions?—No. I went of my own free will.

Are you sure of that?—Yes.

He spoke quickly?—Yes.

Was there any thing else particular in his mode of speaking?—He spoke somewhat with a Highland accent. It was not easy to understand him.

You were there once or twice?—I was there three times, but only heard him twice.

Which time did you hear him deliver a lecture from Daniel?—Both times.

And what you said of his remarks apply to some remarks by him at the one, and to some made at the other meeting?—To his remarks on both occasions.

Some of them were then made twice over?—Yes.

James Waddell sworn.—Examined by
Mr. Maconochie.

Where do you live?—In the Gallowgate.

What is your profession?—I am a surgeon.

Did you ever go to hear the prisoner at the bar preach?—I did.

Do you remember when that was?—I am not perfectly certain; but I think last February.

What was your reason for going there?—I went from motives of curiosity.

Did any thing particular strike you in the course of Mr. Douglas's discourse?—It was altogether novel.

What was new in it?—To discuss politics when preaching the gospel.

Was he very violent?—Occasionally.

Tell what he said.—I cannot do that.

Such parts as you remember struck you?—The impression left on my mind is, that he drew a parallel between Nebuchadnezzar and our king, and Belshazzar and the prince regent.

Do you remember any thing more?—Nothing strikes me at present except a few of the words he used.

Tell them if you please.

Court.—We want to know what he said in drawing the parallel?—One thing he said, that strikes me just now is, that Nebuchadnezzar for his sins was driven from his throne; and the impression made on my mind is, that he said our king was deprived of his reason for his sins and crimes.

Court.—It is not so much your impression,

as his words, if possible, that we wish you to tell us.

Mr. Maconochie.—Did he say in express words that our monarch had been driven from his throne?—I can only say that was my impression. I cannot remember the exact words.

Was that the meaning of the words he used?—I did not say so. It is the meaning that I attached to them.

Had you any doubt that that was his meaning at the time?—I had no doubt at the time.

Solicitor-General.—Will you proceed to state, whether he spoke of any thing else in the course of your hearing him; and state it to the jury?—I cannot recollect just now; my memory does not serve me. There was such a confusion and bustle, and he spoke so fast, that it was only from a few words I could gather what he said.

Mr. Maconochie.—Do you remember whether he said any thing about the king of France?—Yes.

State what your recollection is?—He said that the British had forced a king upon France against the wishes of the people. That is the only thing I can recollect at present, but I did not pay much attention to it.

Did he say any thing about Louis XVI?—Not that I remember at present.

Do you recollect any expressions that he used in drawing the comparison between the prince regent and Belshazzar?—I do not remember the expressions.

State them as near as you can recollect them.—He said, that the night before the taking and destruction of Babylon, Belshazzar and his counsellors were rioting and drinking, and that the prince regent held his meetings of the same kind; and he added, that like causes always produced like effects.

Do you remember his saying any thing of the suspension of the Habeas Corpus act?—He mentioned it.

What did he say?—That it is a deprivation of the liberties of the people.

Did he say any thing of the people who got it passed?—He did; but I do not remember what he said. I do not remember the expressions.

Do you remember the substance?—I could not say. He said it was an oppressive and unjust measure.

Did he say any thing about their meeting with punishment for getting it passed?—I do not remember.

Do you remember his applying any other epithet to the prince regent?—I do not at present.

Do you remember his saying any thing of Parliament, or the House of Commons?—I could not give a precise answer.

Do you remember the substance?—I do not.

Solicitor-General.—When you say you do

not remember, do you mean that you do not remember the expressions, or that you do not remember the substance?—I could not say with certainty that I do remember the substance.

Do you remember his saying any thing about a gibbet?—No.

Did he say any thing about the prince regent being infatuated?

Mr. Jeffrey.—I object to that question.

Mr. Drummond.—Under your lordship's correction, I submit that the question put by Mr. Solicitor-General is perfectly proper, and that we are entitled to put it, otherwise the examination is reduced at once to the single question, what did the panel say?

Mr. Jeffrey.—I object to the question being put; and I really must take this opportunity of stating, that this examination has been conducted in a way, from first to last, that I never heard of before in this Court. They have all along been asking the witness, not what words he heard used, but what was his impression, and his imagination of what Mr. Douglas said.

How would such a proceeding be taken on a trial for murder, or any other felony? In answer to a question, the witness says he has a faint remembrance; and he is then asked what his impression is; to which he replies, that so long an interval has elapsed, he remembers little about it, but has a vague impression on the subject. I object to the whole strain of such an examination; and I hope your lordships will express your disapprobation of the attempt to bring circumstances to the mind of the witness in this manner. When the question at issue is, whether an individual used a particular expression, is it tolerable that that very expression should be put in a question to the witness, with all its concomitants? They should have asked, in a general way, whether the witness heard the panel use any expressions derogatory to the prince regent. To attempt, in the way now done, to state in a question to the witness the very words charged against the panel, cannot be allowed. They might as well read over to the witness the whole discourse at once, and then ask him if he remembers this sentence, or this paragraph, or this discourse. They are not entitled to proceed in this way. The general question which may be put to the witness is, What did you hear the panel say? or, Do you remember hearing him say any thing relating to such and such a matter? But in an examination in chief they are not entitled to take up their precognition, and proceed in the manner now attempted.

The witnesses come with a knowledge that there is a precognition; and they feel themselves in some degree held down to a statement which they know to be in the possession of the Crown counsel. I say that you are not entitled to put your own words into the mouth of a witness; but that you must first

put questions generally, and cannot put in a question, in this way, the very words which are libelled.

Lord Justice Clerk.—In reference to the examination of witnesses, I wish that each examination should be followed out by only one counsel. The examination of the same witness by several counsel tends to introduce an obscurity into the evidence that may easily be avoided. And I apprehend, that the rule of law is clear, that in examining a witness, a general question should first be put as to his recollection of any part of the speech or discourse: and when he answers that he does not remember particularly, it is then competent to ask him whether he heard such an observation or expression employed.

Lord Gillies.—I concur with what your lordship has said, and would particularly press the propriety of only one counsel for each party examining a witness. General questions should first be put to a witness; and it is wrong to start at once from the middle of an examination as to one point to any other point; to go, for instance, all at once from the Habeas Corpus act to the question, whether the panel said the prince regent was infatuated.

Mr. Macneachie.—Do you remember Mr. Douglas using any expression relative to the prince regent being infatuated?—I cannot say with certainty.

You said you remember Mr. Douglas having mentioned the suspension of the Habeas Corpus act. Do you remember whether he said any punishment awaited the persons who had carried that act through?—I cannot say with certainty, either. The impression is not strong enough upon my mind to enable me to remember so long.

I ask you generally, do you remember whether he said any thing at all about the House of Commons?—He did.

Do you remember what he said?—I do not with certainty.

Solicitor-General.—When you say you do not remember with certainty, do you mean that you do not remember the particular words, or the substance of what the panel said?—I only remember the impression made on my mind. It is, that the members of the House of Commons are unjust and corrupt.

Have you the least doubt of that impression having been made on your mind at the time?—Not the least.

Lord Justice Clerk.—It is not as to your impression that we ask you; but, did you hear him use words which plainly, distinctly and unequivocally meant that he was charging the House of Commons, or any part of the legislature, with being unjust or corrupt? It is not the general scope of the discourse, or your impression, we ask; but whether you heard words to that effect?—What he said had that effect or impression upon me. I do not remember the words.

Are we to understand that you do not remember his using the words unjust or corrupt?—I do not remember these words; but from what he said, I have mentioned my opinion.

Solicitor-General.—Have you then any doubt from what he said that such was his meaning?—None.

Jury.—You have mentioned your impression. You do not remember what were the words?—I do not remember.

Was it on a Sunday evening you heard the sermon?—Yes, some time betwixt six and nine o'clock.

You do not recollect the exact day of the month?—No.

Lord Justice Clerk.—Did he lecture or preach?—He lectured.

Do you remember upon what part of Scripture?—On a passage in Daniel.

What chapter?—I do not remember.

You are not sure upon what chapter he lectured.—Was this when you heard about Nebuchadnezzar and Belshazzar?—It was my lord.

Let me ask you this question for the satisfaction of the jury and the Court. You heard him likewise pray?—Yes.

Was there any resumption in the prayer of any part of the lecture?—Occasionally he did so resume.

Have you any recollection of any particular prayer he made upon that occasion?—I have no recollection of the precise words.

Did you go often to hear him?—I went four times at least.

Was this the first or last, or any of the intermediate times of which you have spoken?—He was always upon the same subject.

Are we to understand there was the same parallel drawn upon these several occasions?—There was.

Are we to understand this was on four different Sundays?—Yes. I am not certain of the precise period, but it was all about the same time.

Alexander Taylor sworn.—Examined by *Mr. Drummond.*

Are you a town-officer at Glasgow?—I am.

Do you know that man?—I do.

Did you go to hear him preach last winter?—Repeatedly.

What month?—I think February.

How often did you go?—I was sent expressly twice.

Both times in February?—I think they were: it is a considerable time since, and I could not be very positive.

What did he preach about?—He gave out a text like other clergymen from a pulpit, from Daniel.

What about? Do you remember anything generally of the nature of the text?—I remember nothing of the text itself. It was scarce repeated by him again after he gave it out.

Do you remember any parts of the sermon or lecture? Did anything particular strike your memory?—I recollect he said that seats in the House of Commons were sold like bullocks in a market.

Did he say anything more about the House of Commons, or the members of it?—He said they were greatly subject to corruption, and words to that effect.

Do you remember any more of the words?—I remember he represented Great Britain at present as the modern Babylon.

How did he make that out?—He endeavoured to prove it the best way he could. He hoped the happy period was come of the downfall of the modern Babylon.

Do you remember anything more?—He recommended to his hearers to pray very earnestly, that God would put it into the hearts of his majesty the king, and of the prince regent, to turn their attention to the cries of the people. And he said, that a good prayer would have more effect than ten thousand armed men.

Well, sir, do you remember anything more?—I remember him speaking much of the ancient John Knox. He quoted him repeatedly from the pulpit.

For what did he quote him?—As an exemplary character of his time, and he recommended him to the notice of his hearers.

Did he say anything of the king, and the prince regent?—Yes, I thought he spoke rather disrespectfully of them.

What did he say of them?—Of the prince regent, in particular, he said that he was a man he did not think behaved well somehow.

Did he say what was done that was wrong? Did he find any particular fault?—He seemed to do so; but I have forgot the particular words Mr. Douglas used, from the lapse of time.

Do you remember the substance of what he said?—He drew a simile between the Regent and Nebuchadnezzar.

How did he compare them? In what did he say they resembled one another?—He drew a very strong simile. Nebuchadnezzar was driven from the presence and society of men to feed with the bullocks of the field. He drew a disrespectful simile between them.

Did he say the prince regent was driven from the society of men?—No, he did not.

What did he say?—I forget the precise words. There was a declaration in which I noticed parts of his discourse, but it was given away.

Did he say anything more about the king?—Yes, he did.

What was it?—He spoke in a manner as if he justly deserved the vengeance of God and his wrath.

Who deserved that?—Kings in general, pointing to the kings of Europe.

Did he say anything about the late king of France?—I cannot say I remember he did so.

Did he say anything about the manner in

which the law of the country is administered?—He did not seem to relish the present mode of the administration of the law, from what he said.

What did he say?—He said that there is such a corruption of the Houses of Parliament, that the law is not administered with equity and justice.

Did he use any epithets of contempt or disrespect more than what you have said?—I recollect he certainly did so.

What were the words?—I know the words were taken down in my declaration; but I have rather forgotten them.

Do you remember none of them at all? What was the nature of them?—They were disrespectful, but I cannot name them now.

John Maccallum sworn.—Examined by Mr. Maconochie.

Do you know the prisoner at the bar?—I do.

Did you ever go and hear him preach?—I was ordered by the magistrates of Glasgow to hear him two Sundays successively.

Did you go?—Yes, to John-street.

What time was this?—In the month of March; it might be before or after, I am not very certain.

Do you remember the text from which he preached?—I remember the subject, but the chapter has escaped me.

What was the subject?—On the impious feast of Belshazzar.

Do you remember any comparisons he made?—I have mentioned in my declaration—

Court.—You are only to tell us what you recollect of these two preachings?—Well, I will do justice to my own conscience, and the subject also.

Mr. Maconochie.—Tell what you remember?—There is very little that I do remember.

Tell what it is?—He hinted or spoke to the import, that Britain is the mystical Babylon mentioned in Scripture.

Did he draw a comparison between the two?—I do not remember.

Court.—Do you remember his saying any thing of them together?—He just made a comparison, saying Britain is the mystical Babylon mentioned in the Scripture.

Mr. Maconochie.—Did he say any thing about the king or the prince?—As far as I recollect, he made observations as to the king, and said, of all rulers who follow the conduct of Belshazzar, that their fate would be the same. I do not remember that he made any more particular allusions to our rulers, than to those of any other nation of the present time.

Court.—You say he made no particular allusion, but spoke only of kings and rulers in general?—Yes, my lord.

Mr. Maconochie.—Did he mention the king or the prince regent upon any of these occasions?—With regard to the king and the prince regent, he did not name them but in this way. In speaking of Nebuchadnezzar and Belshazzar, he mentioned the conduct of Belshazzar, in forgetting the judgment of God upon Nebuchadnezzar. He mentioned that Daniel addressed Belshazzar to the effect, that notwithstanding the judgment of God upon Nebuchadnezzar, yet Belshazzar did not mend his ways. And he said, that notwithstanding the prince regent saw the state of his father for these seven years, he did not mend his ways; or words to that import.

Did Mr. Douglas, upon either of these occasions, mention the House of Commons?—He made some remarks upon the House of Commons; but to what extent, or what he said, I could not positively enter into, I cannot say I can recollect now. At the time, I may have had more remembrance.

Do you remember the substance of what he said about the House of Commons?—Upon that head, I do not wish to say any thing, as I am not safe to do it.

Do you remember his mentioning the Habeas Corpus act?—I remember it sounded in my ears as if he mentioned it, but I could not take up what he said about it.

Do you remember whether Mr. Douglas said any thing about the administration of justice in the country?—I remember something of his remarks on our courts of judicature.

What did he say?—There was something he was not satisfied with; their procedure was not what he would recommend. He said that, the Courts condemned some of the reformers without judges or jury; that is to say, without sufficient evidence, which the Scriptures demand, that in the mouths of two or three witnesses every thing should be established.

Did he say any thing about the judges in the time of our Saviour?—I wish to make a remark, in order to do justice to both sides of the question. He said, that, in the time of Cornwallis in Ireland, a serjeant was condemned, upon the testimony of one witness, for keeping company with United Irishmen; that it actually happened that the man had retired to a private place for devotion, at the time when he was accused of being with the United Irishmen; and he said that Cornwallis got the man off, after being condemned.

I ask you, whether he made any observations on the judges in the time of our Saviour? Did he make any comparison between them and the present judges of this country?—It followed, if not immediately, in some portion of the lecture or discourse. He said the judges of this country are worse than the judges in the time of our Saviour; for they did not condemn persons without a competent number of witnesses, granting they were false witnesses.

Repeat this?—He said that the judges in our day are worse than the judges in the time of our Saviour, in this respect, that

they do not find sufficient witnesses to condemn those that are considered guilty. He said that they are worse than the Jews who condemned our Saviour; that the Jewish judges found a competent number of witnesses, allowing them to have been false witnesses.

Did this remark allude to the witnesses in the court-martial you spoke of, or in the trials of reformers?—I could not say.

Do you remember his saying any thing about the vessel of the state?—He considered that, if it be not conducted in a better way, and unless committed to a skilful pilot, it would not reach the shore in safety.

Do you remember his making use of the word millennium?—Yes, I think so.

What did he say?—This age is the millennium of corruption.

Do you remember what he said immediately after that?—I am not able to say.

Matthew London sworn.—Examined by *Mr. Drummond*.

Do you know that man at the bar?—Yes, I do.

Mr. Douglas?—Yes.

Do you remember going to hear him preach?—Sometimes in April or March.

Was there a week or a month between the times?—A week or two, more or less.

How often?—I think three times altogether.

Did he preach from the same text?—I remember none of his texts but one, about the handwriting on the wall.

Was there a great crowd?—There was a very full house.

Was the congregation of the lower ranks of the people?—I do not know. They were all very well dressed. I cannot tell high from low at these times, at least on Sundays.

Do you remember what he was preaching about?—I remember he said that Nebuchadnezzar was driven from the society of men among the beasts of the field, but repented, and glorified God; and that Belshazzar took no warning from his fate; that the king is driven from the society of men, but not to that of beasts, and that the prince regent takes no warning from the circumstance.

Have you a distinct recollection of these words?—Quite distinct.

You said something more of that kind?—I could not always distinguish what he said. He spoke as if he was short of the tongue. He got into a rapture sometimes, and his voice afterwards fell low; and until he recovered his breath I could not hear him.

He was very animated?—Yes.

Did he say any thing about the House of Commons?—I remember his speaking about a corrupt House; I remember his speaking about that.

Court.—Do you mean to say he called the House of Commons a corrupt House?—Yes.

Do you remember any thing he said about it?—Not that I remember of. He prayed heartily for the king and the prince; that the

Lord might change the hearts of his evil counsellors, and place righteous men in their stead.

Did he say any thing about the House of Commons?—That it is a corrupt House, and should be reformed.

Any thing more?—I do not remember.

Do you remember the psalm upon that occasion?—I remember it was the second psalm. He commented on the lines as he read them.

Did he say any thing about the prince during the psalm or any other time?—I believe he prayed for the poor infatuated prince, that the Lord might turn his heart.

Hugh Paterson sworn.—Examined by *Mr. Drummond*.

Do you remember going to hear Mr. Douglas preach?—Yes.

On Sunday evening?—Yes.

At what date?—I do not remember the date.

In the month of March?—Either the month of March or latter end of February.

More than once?—Yes.

How often?—Twice.

What did he preach from?—From Daniel.

Do you remember any part of what he said?—Some words.

What were they?—Do you remember his saying any thing about the prince regent?—Yes, I recollect of that.

Was it in his prayer or sermon he spoke of the regent?—I think I remember that he mentioned the regent in his prayer. He was praying to his Maker to turn his heart, that he might dismiss his corrupt Court, and place in their stead better men, who would take better charge of the prince.

Did he apply any disrespectful expressions to the prince regent?—To the best of my recollection, he called him a bewitched, or poor wretched prince, or some such expression.

What else did he say about him?—There was little more in the prayer that I recollect.

Was there any thing about him in the sermon?—Yes, I think there was.

And what was in the sermon?—He was speaking about not taking a warning from his father's fate.

What did he say would happen to him if he did not take a warning from his father's fate?—I do not recollect it at present.

Did he say any thing about Nebuchadnezzar?—Yes.

What about him?—That Nebuchadnezzar was driven from the society of men, and suffered much from the different sins that he had committed.

Did he make any comparison to Nebuchadnezzar?—Yes, that our king had been driven also from his state and the society of men.

What more did he say about our king? Did he say why he had been driven from his state and from the society of men?—Not that I re-

member. I did not fully understand the words which he used at the time.

Was there any thing about Belshazzar?—The prince was compared with Belshazzar.

By the panel in his preaching?—Yes.

What point of resemblance did he find between them?—Belshazzar had polluted the vessels of the sanctuary or temple of Jerusalem, in drinking out of the vessels, he and his lords, and wives, and concubines, to the honour of idols.

How did he compare the regent to him?—Because he also had rioted.

Did he say any thing about any other king?—About the king of France.

The late, or the present king of France?—Louis the Sixteenth.

What of him?—As far as I can recollect, or could understand, he said that he was advised by his own Court, and the other Courts of Europe, against his own people.

Court.—What do you say?—That by following the advice of his counsellors, he lost his life, and is either in hell or purgatory.

Mr. Drummond.—Did he connect such reflections with our king or prince regent?—Our prince, he said, like the king of France, would not listen to the wishes of his people.

What wishes had the prince not listened to?—The voice of his people, or cries of poor petitioners who had petitioned him.

Court.—Do you mean to say upon oath, that though a comparison was made between the prince and Belshazzar, you cannot state the points of comparison?—I cannot come upon them at present.

John Waddell sworn.—Examined by Mr. Maconochie.

Do you know the prisoner Douglas?—I have seen the gentleman several times.

Did you go to hear him preach?—Yes.

When?—Ten or twelve weeks ago.

End of March?—End of March, or beginning of April.

Did you go often?—Three evenings.

Upon what subject or text did he preach?—The fifth chapter of Daniel.

All the three evenings upon the same chapter?—The two first upon the same chapter, and upon the same text. I do not recollect particularly as to the third.

Did he say anything about the king, or the prince regent upon these occasions?—I heard him speak of the prince regent. There is an impression on my mind, that he said the prince regent is as fit for a gibbet as a throne.

Jury.—Did he say these words, or do you think he meant them?—I thought he said so at the time: but there was a good deal of confusion, and he spoke very hurriedly.

Your impression is, that he said them?—I think he did.

Court.—What do you mean by a good deal of confusion?—From the pressure of the people that were in the lobby, or entrance to the seats.

John Waddell cross-examined by Mr. Jeffrey.

Are you any relation to James Waddell?—Brother.

Was he with you upon these occasions?—No.

Do you refer in the answer which you have given above to the first or second night you heard Douglas?—The first.

Court.—Were you constantly present from the time the service began?—It was begun before I went in.

How long might you be there?—About an hour and a half, or twenty minutes.

Will you be so good as tell us if you recollect any other passage either of his prayers or sermon but this that you mentioned?—Nothing that struck me with any kind of force.

How did he treat of this fifth chapter of Daniel?—That is what I cannot exactly recapitulate.

Do you remember anything that preceded or that followed these remarkable expressions that have been given us?—Relative to the prince regent?

Yes?—I did not hear the expressions previous to that.

Can you tell us what made him use such strong expressions?—I thought I heard him utter them, but I did not hear what he said previously.

What followed?—I do not recollect indeed.

Are we to understand that you cannot tell any one thing he said but what you have mentioned?—Nothing else that he said that first night.

You say you went again?—That night fortnight.

Do you recollect anything he said that night fortnight?—Yes, I recollect he used the expressions, speaking of the battle of Waterloo, that some of those connected with it might consider it an honour, but for his part he would rather consider it as a disgrace.

Nothing else, sir?—Nothing.

How did he treat the chapter of Daniel that night?—I do not recollect anything more than what I have mentioned. I heard him very indistinctly.

Was that from the noise, or from his mode of speaking?—From the noise, and his mode of speaking, and from the pressure of the congregation.

When you heard these remarkable expressions you have spoken to, did you mention them to any one at the time?—Not at the time.

Not that night to anybody?—To none that I recollect of.

When did you mention it?—I could not exactly say. I heard such things mentioned by others. There was just a general kind of speaking about him.

Whether did you, or when did you, mention the expressions to anybody else?—I believe I have mentioned them: but I do not remember when, or where, or to whom.

The following Declarations of the panel were then read:

At Glasgow March, 15th, 1817.

"In presence of Robert Hamilton, Esq., advocate Sheriff-depute of Lanarkshire, appeared Niel Douglas, Universalist preacher, in Glasgow; who being examined, declares, That for the last eleven years he has been a preacher in Glasgow, and during that period has had Sabbath evening lectures and sermons, which, for about the last five years, he has delivered in the Andersonian Institution Class-room, and his audience has been, particularly for the last seven or eight months, very numerous and respectable: That his precentor's name is Nickolson, who is employed in the warehouse of Mr. Robertson, a quaker, a manufacturer, in Commercial-buildings, Candleriggs: That M'Dowal Pate used occasionally to precent, and he did so lately, and he is not certain but he did so last Sabbath: That he keeps no copy of his sermons or lectures, but he premeditates, and, by the assistance of notes, endeavours to adhere as close as possible; and he is not conscious of having made any improper deviation from the object of his text: That for the last two years the declarant in his evening sermons has commented or preached from the book of Daniel; and last Sabbath evening his text was in the latter part of the 5th chapter of the book of Daniel: That before he commenced the service, David Young, one of his deacons, informed him that three spies were supposed to be in the room: That the declarant accordingly mentioned this to the audience, and nevertheless proceeded with the discourse: That the declarant had no notes of that discourse, or of any other since his last illness: That James M'Ewan used to sit in the declarant's meeting-house, but the declarant never heard from him or any other, of any secret association being formed, or means used for procuring a reform in parliament: That at different times the declarant has published some little tracts, some of which treat of the politics and state and condition of the country; and, in his evening sermons, he, as circumstances suggest, has occasionally taken opportunity to animadvert upon these topics, but he never did so with any invidious intention: That in some of his late discourses he spoke of a cloud which hung over this country, and would soon burst; by which he meant nothing more than the misery and wretched state of the community from want, as also the great

progress of infidelity; and he prayed that it might not be allowed to burst: That the declarant prayed for the prince-regent and that he might profit by the afflictions of his father; but he does not recollect of having said, that notwithstanding of what the prince had seen of his father for these seven years past he had not amended his ways: That in this discourse he did not say that seats were sold in the House of Commons as merchandize, or that there was a great deal of corruption in that house, or that several members of it were thieves and plunderers, and divided the spoil of their rich neighbours among them; but he recollects thanking God that there were still some members in our senate who dignified their own character in maintaining the rights of the people: That he took occasion to express his disapproval of the suspension of the Habeas Corpus act, as a measure by which the accused were deprived of the means of their own vindication; but he does not recollect of saying that the country had been condemned without witnesses, judge or jury; and the declarant is still of opinion that parliament never acted so imprudently as passing such an act on an occasion when the minds of the people were so aggravated: That the declarant did identify Britain with the mystical Babylon mentioned in the 18th chapter of the Revelations; and he is not singular in this, as many commentators think with him, that Britain, not Rome, which last was not a maritime nation, is meant by the Babylon there mentioned: That when speaking of the Habeas Corpus act being suspended, he observed, that bad as the Jews were, they did not condemn our Saviour without a form of trial; but he does not recollect of saying anything by way of contrast as to the present execution of the law since the passing of this act: That in this discourse he did not condemn the expedition to Holland: That he does not consider that the battle of Waterloo was a matter of rejoicing, but on the contrary, and he believes he did say so. Denies that he spoke anything of the profligacy of our rulers, of the unjust administration of the laws, of a laxness in the administration, or that he called the members of the House of Commons thieves or plunderers.

(Signed) "NIEL DOUGLAS.
"R. HAMILTON."

The above examination adjourned till Monday next the 17th current, at eleven o'clock forenoon, when Mr. Douglas is required to attend.

At Glasgow, the 17th March, 1817.

"In presence of Robert Hamilton, esq. advocate, Sheriff-depute of Lanarkshire, appeared Niel Douglas, and the fore-

going declaration being read over to him, he begs leave to make the following corrections on it: That he is sixty-seven years of age, and has been a preacher twelve years in Glasgow; for the eight last of these the congregation has been assembled in the Andersonian Institution-room: That instead of David Young saying that the persons were spies, he said there were three persons suspected to be spies; and with these corrections he adheres to his former declaration. Declares, That in reading a passage in the 27th chapter of Ezekiel, where it mentions that the 'rowers have brought us into deep waters,' the declarant expressed a wish and prayer that our rulers might not be allowed to row the vessel of state into deep waters, and left to perish between the straits; and if so, he prayed that a greater than man might be a pilot to a safe haven. On further recollection he did not on this occasion mention the rulers of the nation: That in his discourse he animadverted on the impropriety of this nation's conduct in regard to the late wars, and in the support which they had thereby given to the Bourbon family, and to idolatry: That he never recollects of saying that the present period was the millennium of corruption. And being interrogated, What reason and view he has in animadverting so often on political matters and the measures of government in his sermons and comments on Scripture, and particularly when the same are addressed to the lower orders of the people, and at a period when, he confesses, they are at present suffering from want? declares, That he does not comment often upon the said subjects: but when in his discourses they come upon him, he cannot restrain expressing the spirit of God. And being interrogated, How he expects to remedy the abuses he complains of by harangues to his hearers, instead of addressing and admonishing those persons with whose actions he is displeased? declares, That when expounding the Scripture, he has felt it his duty to point out to the people those measures of the government of his country which he has seen, for this some time back, to be drawing down the vengeance of heaven upon this country, which measures he has observed for some years to have been followed by our government, and the suspension of the Habeas Corpus act is a crowning one, and as such he has held it. And the following he begs may be taken down as part of his declaration, and that it may reach the ears of the rulers of this nation: That his royal highness has more to apprehend from the measures of his official servants than from the madness of his people; which expression, as to the madness of the people, is used in the prayers of the Church of England as to the

recent escape of his royal highness, as the declarant thinks with great impropriety, but he never made this declaration in public: That the declarant has published different little tracts, and, among others, one intituled, 'Causes of our Public Calamity;' another, intituled, 'The Baptist;' and a third, intituled, 'A Word in Season,' each of which the declarant got printed, and a few of each of the copies have been at different times sold by the door-keeper of the meeting-house after sermons; and to the said productions there is now affixed a sealed label, which is docketed and subscribed by the declarant, sheriff-examinator, and clerk, as relative hereto: That of these publications there were about five hundred printed, and there might be forty copies at the least sold of them, but of the precise number he cannot be certain: That the name of the door-keeper, to whom the declarant has given his tracts to be sold, is Samuel Gourlie, a weaver in the Westergate of Glasgow. Declares, That he has frequently inculcated on his hearers, and declared in public, that no man who had the fear of God would be concerned in the pulling down of one government and setting up another, and that those who did so were destitute of the fear of God; and that so far from approving any violent measures to oppose our rulers, or compel the legislature to adopt any popular measure, he is convinced in his conscience that Christianity condemns all wars whatever. And being interrogated, If he was never afraid that the introduction of these political subjects into his sermons, and especially his avowed condemnation of the measures of government and of the legislature, would create a spirit of discontent amongst the people, and his hearers in particular? declares, That in the course of his lectures upon Daniel, he was naturally led to make these remarks; but he always cautioned his hearers against every thing that might tend to disturb the peace and good order of society. In witness, &c.

"DUNCAN CLARK, witness.

"JOHN LESLIE, witness.

(Signed) "NIEL DOUGLAS.
"R. HAMILTON."

"At Glasgow, 18th March, 1817.

"In presence of Robert Hamilton, Esq. advocate, Sheriff-depute of Lanarkshire, and in the petition and complaint presented, &c. appeared Niel Douglas, present prisoner in the tolbooth of Glasgow; who being examined, and his declaration emitted on the 15th and 17th days of March instant, being read over to him, declares and adheres thereto; and farther declares, That his religious creed differs from that of the church of Scotland

only in this, of his believing in the universal restoration of mankind, and he acknowledges no head as supreme in the church except Christ. And being interrogated, If it is customary with ministers of his persuasion of secession, to mingle their discourses with political observations or censures on measures adopted by government, when these last happen to be disapproved of by the preacher? declares, That he feels it to be his duty, as a preacher in the sight of God, as a subject and servant of the Prince of Peace, to testify in his doctrine against whatever offends God, violates his law, infringes the essential right of his subjects, and is prejudicial to the best interests of mankind, and believes that to be the duty of every professed minister of Christ. And being shewn a sheet on which are written certain heads of discourse, which begins with 'Jesus said,' declares, That the same contains his speech delivered at a meeting at Anderston, held for the purpose of having it resolved whether they should petition for reform, and it was copied by a young lad, an apprentice to a writer in town, with the exception of the lower part of the fourth page, which is written by himself: That it was intended his speech should be published in the newspapers, but it was never done, and the said paper is doqueted and subscribed by the declarant, and sheriff-examinator, and clerk, as relative hereto. And being shewn a hand-bill, which is now doqueted and signed, as relative to this declaration, and which announces the publication of the Baptist, &c. declares, That he got five hundred of these published, and he got one of them pasted upon the door of his meeting-house, but there never was any other of them used; and if the Court require it, he will not make use of them till better times, as he has no wish, however innocently, to give cause of offence. In witness, &c.

"GEORGE DUNCAN, witness.

"JAMES THOMSON, witness.

(Signed) "NIEL DOUGLAS.

"R. HAMILTON."

EVIDENCE FOR THE PANEL.

Allan Cameron sworn.—Examined by Mr. Jeffrey.

Do you know Mr. Douglas at the bar there?—Yes.

Are you a hearer of his?—Yes, Sir.

A regular attender at his place of worship?—I have attended his preaching about eighteen months.

Do you remember whether you attended his lectures or preachings on the Sunday-evenings in the beginning of March last?—Yes.

Every Sunday-evening during that time?—Yes, I believe I did.

Do you remember his lecture from Daniel

about Nebuchadnezzar and Belshazzar?—Yes.

You remember that?—Yes.

Do you remember his making any comparison between the condition of our unfortunate sovereign king George, and that into which Nebuchadnezzar fell?—Yes, I remember an imperfect parallel which he drew.

In what respect did he make the parallel between them?—As to the duration of their derangement.

Did he begin suddenly upon that subject, or had he gone regularly through Daniel?—He had been going regularly through Daniel.

Do you remember hearing him say any thing about the cause of this infliction of Providence on our sovereign?—No, he specified none.

Did he say that he was smitten by divine vengeance on account of his infidelity or sins?—Never.

You are sure of that?—I am certain of it.

Did he mention anything of his recovery?—Yes, he prayed and fervently wished the king might be again restored to his throne; and if not to his throne on earth, to a throne in heaven.

In the course of his lecture, while led to notice the king's unfortunate malady, did he utter any expression of reprobation or blame towards the king?—No.

Did he speak of him with respect?—Yes, always with respect.

Was he in the habit of praying for his majesty?—Yes, generally; he never missed a day in my recollection without praying for the king.

Was there any thing in these prayers that implied blame upon the king?—No.

To what effect did he pray?—I do not recollect the exact words.

You have attended the established church sometimes?—Yes.

You have heard them pray there for the king?—Yes.

To the same general effect?—I think Mr. Douglas was more particular.

In what respect?—He prayed more fervently for him than those I had heard.

Do you remember, on these occasions, while going on with his scriptural history, his saying any thing of the prince regent?—No, I do not recollect.

Did you ever hear him say the prince regent was a worshipper of Bacchus?—I never did.

Can you take it upon you to swear, whether he ever said the prince regent was a poor infatuated, bewitched, or wretched prince?—I could answer upon oath he never did.

Did you pay particular attention to the political expression of Mr. Douglas's sermons about the time I have mentioned?—Yes.

Had you any particular cause for this?—Upon the night of the 9th of March I paid particular attention to what he said. I was informed there were spies present, and I paid attention lest he should utter any thing that might be charged against him.

Did you hear him upon any occasion about that time say any thing about the Houses of parliament, especially the House of Commons?—No, Sir.

Did you ever hear him say the House of Commons was corrupt or unjust?—No, I never did.

Did you ever hear him say the members of that House were thieves and robbers?—No, I never did.

Have you heard him about that time, or at any other time, make remarks about the administration of the law in this country?—No, he always spoke with high respect of the law.

Did you ever hear what he said on the administration of the law?—He bestowed as great encomiums upon the administration of the law as language can express, or ingenuity invent.

Frequently, Sir?—Always.

You say he did this generally; you were going on to mention an instance?—He said after his son's trial, that he was happy he was a native of a country where the law was impartially administered.

This was after his son's conviction?—Yes.

Do you know what he had been tried for?—Swindling. He said it was his high satisfaction to be a native of a country where the law is so impartially administered.

Did he say this from the pulpit?—Yes.

In express reference to his son's trial and conviction?—Yes.

He mentioned them?—Yes, he did.

Are you sure this was said seriously, and that there was no irony in what was said?—It was said quite seriously.

Are you acquainted with Mr. Douglas in private life?—Yes.

From what you have heard him say uniformly in the pulpit, and on other occasions, what were his habitual expressions about the sovereign and the prince regent?—He always spoke with great respect of them.

Was he an advocate for a reform in parliament?—Yes, for a constitutional reform.

Did he ever mention publicly or otherwise, his sentiments as to the means of pursuing this object?—Yes, by petition.

Did he express his sentiments about the use of violence or force of any kind?—Yes, he deprecated it very much.

Did he say any thing of the riots?—Yes, when riots were in the Calton, he desired his hearers not to give any countenance to them.

Did he do this earnestly, Sir?—Yes.

Upon these occasions, during February or March, can you take it upon you to swear, whether in the pulpit he ever said that the prince regent was as fit for a gibbet as a throne?—He never did; I can answer it upon oath.

William Warrell sworn.—Examined by Mr. Cockburn.

Are you a weaver?—Yes.

Do you know Mr. Douglas there?—Yes, I know him.

You know he preaches the gospel?—Yes.

You were accustomed to attend him?—For about thirteen months.

The last thirteen months?—Yes, sir.

Constantly?—Yes.

You recollect doing so during his ordinary discourses, last February and March?—Yes.

Do you recollect his lecturing or preaching from Daniel?—Yes.

About Nebuchadnezzar and Belshazzar?—Yes.

Did he lecture upon these just when he came to them in his course of lecturing, or did he go out of his course to get at them?—He took them as they came.

Do you remember, whether when talking of Nebuchadnezzar on that occasion, he made any comparison between him and our king?—Yes, with respect to the length of their sufferings.

Merely, or principally upon that?—Principally upon the length of their sufferings.

Do you remember his assigning any reason why Providence afflicted our sovereign?—He said, that for the sins of the nation, the head was afflicted.

Did you understand he said or not, that his majesty was afflicted in this way for his own sins?—I never heard him mention that.

Did he mention the fact of Nebuchadnezzar having been restored to his throne and reason?—Yes.

Did he express any wish that such a result should happen to George the third?—He prayed for it frequently.

Was he in the practice in his discourses of speaking respectfully of the king?—Remarkably so.

Was he accustomed to pray with apparent sincerity and earnestness for the king?—With great sincerity.

Do you know him in private?—I never was at his house more than three times altogether.

Was he in the habit of recommending to his audience to love the king as he seemed to do?—He was in the habit of impressing that upon our minds; he ordered us to pray for him.

Did you ever hear him mention the House of Commons?—Yes, I have heard him mention the House of Commons.

Did you ever hear him say the members were thieves and robbers?—No.

Did you ever hear him use language of that tendency?—No, never.

Did you ever hear him make use of the expression, thieves and robbers, to any description of men at all?—I believe he did when speaking of patronage, of those who did not come in at the door; he said that those who do not come in at the door, come in some other way.

And he applied this?—Not to the ministers of state, but to the ministers of the gospel.

Did you ever hear him talk of the gods in

which the law is administered in this country?

—Yes, I have heard him pay the greatest encomiums to the administration of the law. He said he was proud to be a native of a country in which the laws were so well administered.

You never heard him speak of them as administered unjustly?—No, never.

Did you ever hear that he had a son tried for fraud or something?—Yes.

Did you ever hear him speak of his son's trial?—After he came back from Edinburgh.

What did he say?—That he had never before had the honour of seeing a jury impanelled, and he had a secret pride in being a native of a country where the laws were so impartially administered.

This was after the conviction of his own son?—Yes.

About the 9th of last March, or on any other occasion, did you hear him say that he thought the prince regent was fitter for a gibbet than a throne?—Never in my hearing.

Nor any thing of that purport?—Never at all.

If he had said so, could it have escaped you?—I think not so remarkable an expression as that.

Is there any thing particular about Mr. Douglas's utterance or mode of speaking?—He speaks very rapidly sometimes.

What sort of a dialect or accent has he? As much Highland as any thing else?—He has rather a little of the Scottish accent.

Is he distinctly heard, or is an effort required to hear him?—To me he is distinct.

Have you been long accustomed to hear him?—Thirteen months.

When you heard him for the first time, did you hear him distinctly?—Yes, it was so with me. I always heard him distinctly.

Did you ever hear him mention the prince regent, when speaking of Nebuchadnezzar and Belshazzar?—Yes.

What did you ever hear him say about the prince?—That he is a benevolent prince.

Did you ever hear him say he was a poor infatuated wretch?—Never.

A devotee of Bacchus?—Never.

A poor bewitched creature?—No. He said he was a humane and compassionate prince, having pardoned more criminals since he came to his station than had ever been done within so short a space he believed.

William Nisbet sworn.—Examined by Mr. Grant.

You are a weaver by trade I believe, and reside at Glasgow?—Yes.

Are you acquainted with Mr. Douglas the prisoner?—I know the gentleman.

You have attended his chapel?—For seven years and more.

Do you remember having been at his chapel one Sunday in the beginning of last March?—I am almost always there in the evenings.

Do you remember Sunday the 9th of March?—Yes.

Was there any thing that evening that caused you to pay particular attention to what Mr. Douglas said?—No, sir.

Do you know a person of the name of James Pirie, town-officer?—Yes.

Have you seen him to-day?—Yes.

Was he at church that night?—He was.

Were any other strangers there?—There was another town-officer there.

And how did that other employ himself? What was he doing?—He was sitting beside Macallum.

Was there another town-officer?—There was a third.

Where was he sitting?—Up towards the back of the place of worship.

Did they seem to be paying great attention to Mr. Douglas?—I did not see what the one who was back did; but the one in the fore part sat and wrote at times.

Do you recollect the subject of discourse that evening?—A passage in the 5th of Daniel.

Was he lecturing upon it, or was it a discourse from one text?—He was lecturing upon it.

Had he come to that chapter in the course of lectures he was delivering, or had he fixed upon the subject of that night's discourse by itself?—In the course he was delivering, he took it in rotation.

How long had he been lecturing in this rotation in the book of Daniel?—For two years; at times leaving it and returning to it occasionally.

And when he had left it and returned to it, did he return to the place at which he had stopped?—Yes.

Is it the 5th chapter of Daniel which treats of Nebuchadnezzar?—Yes.

Do you remember particularly what Mr. Douglas said upon that occasion with regard to Nebuchadnezzar? Did he mention the affliction with which he was visited?—Yes.

Did he draw any parallel between our sovereign and king Nebuchadnezzar on that occasion?—I heard him draw one simile or parallel.

How did he express himself?—That as Nebuchadnezzar was raised up from his affliction to his throne and dignity, if it was the will of God, he hoped that our sovereign might be raised up to his throne and dignity, and be enabled to adopt the song of the good old Simeon, "Lord lettest now thy servant depart in peace, for mine eyes have seen thy salvation."

Are you positive about these expressions?—Yes.

And can swear to their having been used by Mr. Douglas that night?—Many nights.

Upon that night?—I cannot say as to that particular night, but he always prayed fervently in these and similar words.

And that night, did he draw any parallel between his majesty and Nebuchadnezzar, calculated and intended to the hurt, prejudice, and dishonour of his majesty?—No.

Did he use this expression, that his majesty was like Nebuchadnezzar, driven from the society of men for his infidelity and corruption?—No.

Did he use any words of this import?—No.

Did you ever hear him use words of that import?—No.

Did you hear him make mention of the prince regent upon that occasion?—He always mentioned the prince regent.

In what way?—In praying for him.

Did he, upon that occasion, say any thing about any body being an infatuated wretch, a poor infatuated devotee of Bacchus?—No.

Did you ever hear him apply these or similar expressions to his royal highness the prince regent?—No.

Did you ever hear him speak of the prince regent in terms at all of that import?—No.

Did you ever hear him say that the prince regent was fitter for a gibbet than a throne?—No, never.

Are you quite sure of this?—Yes.

Could he have made use of this expression without your having observed it?—No.

Could he have used those other expressions without your observing it?—No.

And you now swear, upon your solemn oath, that you never heard him make use of the expressions which I have mentioned?—No, I never did.

Were you there every Sunday evening in February and March last?—No, I cannot say I was.

How many nights were you absent?—I cannot recollect but of one.

You can speak to the night when you saw Pirie there?—Yes, I am very certain as to that night, Mr. Douglas did not use such expressions.

Did you ever hear him mention the fate of the Babylonian empire, in the course of his lectures?—Yes.

He did not then make use of any of the expressions which I have mentioned?—No.

Did you hear him talk of the administration of justice in this country?—Yes.

In what terms?—With great praise.

Did you ever hear that he had the misfortune of having a son tried for any offence?—Yes.

Did you hear him preach after his son's trial had taken place?—I did.

Did he make any allusion to the administration of justice upon that occasion?—He extolled the just laws of our country.

Did he make use of any particular expressions or remarks?—He said it was a great blessing to live in a nation in which such laws were observed, that no man could be harmed without proof being regularly led of his guilt.

Did you ever hear him talk of the members of the House of Commons as thieves and robbers?—No.

Did you ever hear him apply these epithets to any description of persons?—Yes.

To whom?—To the ministers of the Gospel. To what description of the ministers of the Gospel?—He was applying the words of Scripture to them.

What are these words?—All those that do not enter by the door to the sheep-fold, but climb up some other way, are thieves and robbers.

Was Mr. Douglas in favour of patronage in the Church, or against patronage?—The voice of the people, according to the word of God, as he held forth, was the door.

John Rentoul sworn.—Examined by Mr. Jeffrey.

You are a candle-maker?—Yes.

Do you know Mr. Douglas?—Yes.

Do you attend his place of worship?—Yes.

Have you done so long?—A dozen of years.

Have you attended pretty regularly?—Yes, I think I have.

I ask you, in particular, were you regular in attendance since the beginning of this year, in February and March?—Yes, I have heard him three times every day when he was preaching.

All the Sunday evenings?—I am certain I have.

Do you remember that about that time he was lecturing on the book of Daniel?—I mind that well.

Do you remember his coming to the history of Nebuchadnezzar and Belshazzar?—Yes, I think I do.

Do you remember upon that occasion his making any kind of parallel between Nebuchadnezzar and George the Third?—No.

Did he make any mention of the king upon that occasion?—Nothing farther than mentioning his name. I cannot exactly say what were the words that he used.

Did he make any observation as to the king being afflicted with a malady?—Never in any reproachful way. I have heard him often praying he might have a lucid interval before he died.

Do you remember his making allusion to Nebuchadnezzar's restoration to his throne?—I do not recollect.

Do you recollect his ever saying that our king had been driven from the society of men, on account of conduct like Nebuchadnezzar's?—Never.

Did you attend to his discourse at that time?—Yes.

Could he have used such an expression without your observing it?—I don't think he could. I have heard him say that infidelity prevailed from the palace down to the street scavengers.

Could you swear he did not make use of the expression to which I have already alluded?—It was not done to my knowledge.

You mentioned he was in the habit of praying for the king?—Yes.

Did he pray earnestly for him?—Earnestly, more so than any minister I ever heard.

Did you ever hear him use disrespectful terms in speaking of the king?—No, never.

How did he speak of him?—He always spoke of him with respect.

Do you remember his saying any thing as to the prince regent in going over this chapter?

—I really cannot remember. I cannot be positive what he did say about him.

Did he call him a worshipper of Bacchus?—Never.

An infatuated prince or poor wretch?—Never.

If he had used these expressions you must have heard him?—I think so; but I never heard him, to my knowledge.

Have you heard him speak of the House of Commons?—Yes, I have heard him.

Did you ever hear him speak of the members being corrupt or unjust?—I heard him once mention, that if he could believe the public prints, a member of the House had offered to prove that there had been seats bought and sold.

Did you ever hear Mr. Douglas call members of the House of Commons thieves or robbers?—No.

Did you ever hear him apply these epithets to any other description of persons?—I have heard him make some observations on the way ministers were thrown by patronage into some places of the country.

And he used these expressions in reference to that circumstance?—That was my opinion of it.

Did you ever hear him say any thing in his discourses about the administration of the law in this country?—He commended it frequently.

Often?—I could not say how often. He said he was happy to live in a country where the law was so justly administered.

Did you ever hear him make any observations of an opposite tendency?—I never did.

Do you happen to know he had a son tried for some offence last summer?—Yes.

Do you remember Mr. Douglas making any remarks after his return from Edinburgh on that occasion?—I do not remember the exact words he used, but he was thankful that justice was administered so fairly.

That was the substance of what he said?—That was the way I took it up.

Do you know whether Mr. Douglas was a reformer, whether he wished a reform of parliament or not?—I have heard him speak of effecting reform in a constitutional manner.

Do you remember his saying any thing as to the manner in which it should be pursued?—I cannot say exactly.

Was there any thing particular in Mr. Douglas's manner of delivery in the pulpit? Did he speak fast or slow?—I don't think a stranger could make much of him the first time of hearing him.

How did you yourself take him up at first?—Not well at first, but I now follow him pretty well.

Are you acquainted with Mr. Douglas in private life?—A little.

You have attended his ministry for twelve years, and know him a little in private; what sentiments has he been in the habit of expressing as to his majesty and the constitution?—I have always heard him speak favourably of them.

Have you ever heard him recommend the use of violence or force in procuring a reform in Parliament?—I never did.

Did you ever hear him say it would be a good or a bad thing to use such means?—About the time of drawing up petitions for reform, he exhorted the people to conduct themselves peaceably and to act constitutionally.

To avoid all disorder?—Yes.

David Young sworn.—Examined by Mr. Cockburn.

Do you know Mr. Douglas who is sitting between the soldiers there?—Yes, I know him.

Do you attend his chapel?—I do.

How long had you attended there before he was apprehended?—About six years.

Did you attend regularly in February and March last?—I did.

How often?—Generally three times a-day.

Did you attend every evening during that time?—Every evening except one, I could not get in, early in March.

Do you remember his being apprehended?—Yes.

Did you hear him the Sunday evening before he was apprehended?—Yes.

Had you heard that spies had been sent to hear his discourses?—Yes.

And you were there at that time?—Yes.

On what portion of Scripture did he discourse?—On the fifth chapter of Daniel.

About Nebuchadnezzar and Belshazzar?—Yes.

Do you remember his comparing our king to Nebuchadnezzar?—No.

Did he speak of Nebuchadnezzar at all?—Yes.

What did he say?—In his prayer, he prayed that our king, like Nebuchadnezzar, might be restored to his throne, and that his last days might be more glorious than the first.

Did he say that Nebuchadnezzar was driven from his throne on account of his sins?—Yes. that Nebuchadnezzar was.

That George the Third was?—No.

Did he use disrespectful language towards the king?—The very reverse.

If not upon that night, did he upon any occasion use disrespectful language towards the king?—On the contrary, he sometimes prayed for him three times a day, and recommended loyalty and obedience to the law.

Did he mention Belshazzar upon this occasion?—He did.

Did you hear him compare any body to him?
—No. I did not hear him compare any body to him.

Did he compare the prince regent to him?
—No.

Did he call any body a poor infatuated wretch?—No.

Or devotee of Bacchus?—No.

Then he did not call the prince such?—No.

If such an expression had been used, must you have heard it?—Yes.

You know his mode of speaking?—Yes.

Were you quite within hearing of him?—Yes.

Did he say any thing that night, or upon any occasion you ever heard, against the mode in which the law is administered?—The very reverse. The first time he preached after his son's trial, he spent a whole discourse upon the justice and equity of the law, and the impartial administration of it in the kingdom, and more especially in this high Court.

Did you ever hear him use language inconsistent with that which you have mentioned?—I never did.

Did you hear him upon the occasion when the spies were there, say any thing of the House of Commons?—I do not remember that I did.

You did not hear him call any of the members of the House of Commons thieves and robbers?—No.

Did you ever hear him use that expression?—As to clergymen who come in by patronage.

Did you ever hear him say that seats in the House of Commons were sold like bullocks in a market?—No.

Do you know Mr. Douglas in private life?
—I have had a good deal of private conversation with him.

Is he peaceably disposed?—He is peaceably disposed.

Is he a friend to reform?—Yes.

How did he wish to get it?—By petitioning.

Did he recommend violence?—The very reverse.

Did you ever hear him discourage it?—Often. In his sermons he discharged his people from having any thing to do with either riots or private meetings.

Court.—By private you mean secret meetings?—Yes.

John Chalmers sworn.—Examined by Mr. Jeffrey.

Do you know Mr. Douglas?—Yes, I do.

Have you been in the habit of attending his church?—Yes. I have heard him often these six months past.

Were you there the Sunday evenings in February and March last?—Some of them.

Were you there when he was lecturing upon the fifth chapter of Daniel?—I heard some of his lectures upon it.

His lectures about Nebuchadnezzar and Belshazzar?—Yes, I heard some of his discourses upon that subject.

Did you hear him make any comparison between the case of our king and Nebuchadnezzar?—I do not remember of any comparison between the two. I heard him pray fervently that the king might be restored to his reason and his government.

Upon what occasion?—Upon the occasion above alluded to. And he prayed fervently that the affliction might be sanctified for the instruction of the nation and his own son, and that we might all learn to fear God and reverence the king.

Did he say the malady was the consequence of infidelity and wickedness?—I never heard him use such an expression.

Did he pray for the king?—Fervently, for his temporal and spiritual welfare; and he recommended to his hearers to do so likewise.

Did you ever hear him use terms of disrespect or reproach towards the king?—Never towards his majesty, his person or government.

Towards the prince regent?—I do not remember of any expressions of disrespect towards him. He prayed fervently for him, that he might reign for the glory of God, and the good of his people over whom he presided.

Did you ever hear him call him an infatuated wretch?—I never heard him use any words like that.

Did you ever hear him say any thing about the House of Commons?—I remember something about that. He said there were some things about the House of Commons that he thought it would be of benefit to have reformed. He professed himself a well-wisher to the minority in the House. He mentioned it was stated in the newspapers that seats were sold as in a market; and he said this certainly was odious.

Did he point out in what way a reform should be set about?—I do not recollect what he said as to that. He exhorted the people to petition in a legal and constitutional form.

Did he ever hint that good was to be done by violence or force?—The reverse. He always recommended loyal and peaceable measures.

Did you ever hear him say any thing about the administration of the laws?—I do not recollect of him speaking of that particular point.

Is there any thing particular in his manner of delivery?—I was several days hearing him before I could understand his mode of delivery. It was difficult for me also to follow him, his views being different from those to which I had been accustomed. I heard him several times before I was able to understand him.

Does he speak fast?—The peculiarity of his delivery arises rather from his age and frailty. He is nervous, and his voice is extended too high and then falls away. On account of the infirmity of his voice, he endeavours to raise it.

Mr. Jeffrey.—There are other witnesses in

attendance; but it appears to us unnecessary to take up the time of the Court by calling in more.

Lord Justice Clerk. — You judge rightly; to call any more witnesses to the same point must be quite unnecessary.

Mr. Solicitor General. — From the course which, in the present circumstances, I deem it proper to pursue, the duty now to be performed by you will not be attended with that pain or responsibility, from which, at the commencement of the trial, I considered it to be inseparable.

The charge against the panel at the bar is that of sedition—a charge of which the relevancy has been established by a judgment of the Court, and cannot admit of dispute. The sedition charged consists—in having uttered a seditious libel against his sacred majesty the king, and against his royal highness the prince regent—in having uttered a seditious libel against the House of Commons—and in having uttered a seditious libel against the administration of the laws of this kingdom. And, undoubtedly, if it had been proved, that the panel had endeavoured thus to alienate the affections of the people from any or all of these objects of their allegiance, he would have been guilty of a very heinous offence. If such attempts had been attended with either partial or total success—if the fidelity, reverence, and attachment of the people to any or to all of these objects had been shaken—there would, in the one view, have been very little left, and in another view much of those principles would be destroyed, to which the allegiance of the subject must be attached, or by which good order throughout the kingdom can alone be maintained.

The peculiar circumstance with which this sedition is attended, is, that it has been committed by a clergyman—by a person exercising duties of a very important description, which are far removed from any connection with political discussions. And if, in ordinary situations, and by persons in the ordinary avocations of civil life, the uttering of a seditious libel be criminal, beyond all doubt it must be infinitely more criminal in the case of a person whose province it is to impart useful, moral, and religious instruction. A person who has such duties to perform is, in his unjustifiable and wicked aberrations from his duty, guilty of a great and dangerous offence. The functions of a clergyman are among the most important in civil society, whether the nature and purpose of his duties, or the dangerous facilities and great trust with which he is necessarily invested, are considered. His duties are, to communicate moral and religious instruction; and in proportion to the vital importance of these duties and objects when well performed, is the criminality of his conduct when, under the mask and disguise of his function, he disseminates the poison of discontent and sedition. He is intrusted with

the weekly power and opportunity of assembling and addressing crowded congregations for one lawful purpose only; and the danger of permitting such opportunities to be turned to any other purpose but that of enforcing the duties of religion, peace, virtue, and charity, need not be enlarged upon here.

The first part of the seditious libel uttered by the panel against his sacred majesty and against the prince regent, consists in a scriptural allusion;—in the perversion and misapplication of a portion of Scripture, of which, I believe, there are few, either in the ordinary or more intelligent ranks of society, who are ignorant; and it is just as possible, in this indirect manner, and by preference to particular portions of Scripture history, to utter libellous or seditious matter, as by the most direct words which language affords. There is no blasphemy or sedition, how abominable and atrocious soever, that may not in this form be spread about. The name, character, and conduct of his majesty, whether public or private, I have been habituated to consider as sacred subjects, not to be profaned by investigation and discussion, either in parliament, in courts of law, or in churches. This is the true principle of the constitution; and the whole tenor of the evidence of this day's trial shows, that it is a principle from which it would be unwise to depart.

If the case had stood upon the evidence brought in behalf of the Crown, I should have called upon you, without hesitation, for a verdict of guilty upon two of the charges stated in the libel; *first*, the charge of uttering a seditious libel against his sacred majesty and the prince regent; and, *second*, the charge of uttering a seditious libel against the House of Commons. With regard to the third and remaining ground of charge against the panel, in the minor proposition of the indictment, there has been no evidence brought before you.

At the same time, I must observe, that the evidence on the part of the Crown falls far short of what I expected to have laid before you. The inquiries or precognition taken in the ordinary course of the duties of local police, when the facts were fresh in the recollection of the witnesses, and when they had recently heard the seditious preachings of the panel, exhibited to me a case on which I entertained not a doubt of the measures to be taken, and on which I am confident you would not have entertained a doubt as to what your duty would have required of you. From the interval of time, however, which necessarily has elapsed, the recollections of the witnesses have become more imperfect and uncertain. In these observations, I am far from saying, or meaning to insinuate, that you ought to believe, or be at all influenced by any thing which has not been laid regularly in evidence before you. I merely state these things in explanation of the course of conduct which I am in this case to adopt.

On the supposition that full credit is due to
2 X

the witnesses on both sides, there are some charges made out against the panel, which render his conduct highly criminal—which establish against him a very great malversation of duty, and which bring home to him a criminality not to be distinguished from sedition.

It is proved by all the witnesses for the Crown—it is proved by those witnesses for the panel to whom any credit is due—it is proved by his own declarations, which cannot be heard without pity for his folly, and indignation for his impiety, that he is a political preacher. To all who have paid attention to the progress of the trial, it must be clear that he has been in the habit of arraigning, in his discourses, the measures of government, and of infusing among his hearers political dissatisfaction. I say, that this general conduct is most dangerous, criminal, and seditious, whether occurring in a sectarian like the panel, or in a minister of the establishment. In a sectarian like the panel, it is more dangerous, because he is liable to no ecclesiastical superintendence and jurisdiction. Such conduct, indeed, might lead to doubts as to the expedience of that unlimited toleration which the benignity of our constitution confers. In the one case or the other, I repeat it, it is a prostitution and malversation of one of the most important duties of civil society.

That the panel and all Christian pastors ought to pray for the prosperity of the land in which he lives—that he should pray for tranquillity and good order—that he should pray for all sorts and conditions of men—that he should pray for his majesty, as the first and highest personage in the land—that, above all, he should earnestly pray, that this venerated person, who is followed into his retirement by the reverential sympathy and tenderness of all his subjects, should be relieved from the calamity with which he is afflicted, are essential parts of his duty. But, beyond this, all is forbidden; and the arraignment of present public measures, and the discussion of daily politics, is equally a criminal departure from his duty as a Christian pastor, and from his duty as a British subject.

That a general criminality characterises his conduct in these respects, no man can doubt. But, besides all this, the evidence of particular offence is not slight. That he did presume to draw a parallel between Nebuchadnezzar and our sacred sovereign, admits not of a doubt. Such a parallel was most criminally imprudent and indiscreet. Of this fact there can be no dispute; but there does exist some obscurity as to the extent to which that parallel was drawn. The witnesses for the Crown prove that it was drawn to the utmost length of the Scripture history. The witnesses for the panel say that it was not drawn to any improper effect—some of them say that it was drawn partially—some of them say that it was only drawn as to the duration of the infirmity with which the Babylonish king was by the special visitation of Heaven afflicted. But I do affirm,

that it was impossible to draw any parallel—it was impossible to allege a single point of resemblance, between his most sacred majesty and the personage mentioned in Scripture, without seditious criminality. Whether the cause, nature, or duration of that awful infirmity be referred to, it was impossible, without criminality, even in the most remote degree, to insinuate the resemblance or parallel. If the resemblance was placed on the duration of the infirmity, what was it? It was till his heart returned to his God—it was till “he knew that the most high God ruled in the kingdom of men.” Who is there with the heart of a Christian, or with the loyalty of a British subject, that can dare to impute the resemblance?

With regard to the libel against the House of Commons, there is some contradiction in the evidence. The witnesses for the Crown do certainly say that the panel did use, towards that branch of the constitution, the expressions charged in the indictment, or something of similar meaning. It is proved by his own declaration that he discussed the merits of that House in a way not favourable to its character; and the witnesses whom he has adduced in defence do not give such an explanation as to exculpate him. They say that he mentioned the expressions narrated in the indictment as having been uttered in that House by some of its members, in stating the manner in which seats in it were acquired. There are many things, however, reported to be declaimed within the walls of parliament, which would be sedition if uttered any where else; and the most wicked and seditious libels might in this manner be disseminated with impunity, if such a justification were sufficient.

It is impossible, therefore, to hold the panel as guiltless. Even if he had been a layman, he would have been criminal, and much more is he culpable as a clergyman, enjoying the free exercise of teaching religion to his fellow-subjects, and professing to teach a religion of which the characteristic is charity.

Notwithstanding these circumstances, however, I am satisfied that the proof has fallen short of what I expected at the institution of this trial. In some part of the charge the evidence is not sufficiently certain and explicit; in some part of the charge there is room to doubt if there be not some misunderstanding in the witnesses for the Crown; and in one part of the charge there is no evidence at all. In one particular, perhaps, the evidence for the panel has afforded something like an explanation of a suspicious circumstance, although the greater part of the evidence led in his behalf exhibits a degree of tutoring and preparation not in favour of its credibility. But, on the whole, I am clear that the evidence is not such as to be pressed on a jury, and in this opinion my inclination and official duty coincide. I submit to you, that while a verdict of *Not Guilty* cannot be reconciled with the evidence, the proper return for you to give is that of *Not Proven*.

Mr. Jeffrey. — After what you have now heard, I should think myself greatly to blame if I were to detain you with many words. Now that the prisoner at the bar is safe, unquestionably my great anxiety is removed. At the same time, I cannot help regretting, that my learned and honourable friend, who has made, on the whole, such an use of the evidence as is to the credit of his sagacity and candour, did not carry his liberality a little further; for had he only said, as I think he must have felt, that you should find a verdict of *Not Guilty*, instead of a verdict of *Not Proven*, I should not have been called on to address you at all. But, feeling that the prisoner is entitled to be freed altogether from the grievous charges in the indictment, I must trouble you with a very few remarks.

No doubt there is some contrariety on the face of the evidence. The witnesses for the Crown, you will recollect, said, but with the utmost hesitation, that their impression was, that certain words were used, which, if you could fully believe to have been used, would undoubtedly have attached blame—and blame of considerable magnitude—to the prisoner. But even if that evidence had stood uncontradicted, the singular hesitation and uncertainty of their statements, and the manifest bias which some of them had obviously received from the character of their employment, do so affect their testimony, that you could never, upon the strength of it, think for a moment of touching the liberty of a fellow subject.

But, when you take into consideration the facts disclosed in the evidence for the prisoner, it appears to me that you can have no hesitation in finding him not guilty of the charges preferred against him. In saying this, I am free to state, that I have no inclination, and I feel great satisfaction that I am not obliged, to impeach the veracity of any of the witnesses you have heard this day. But the witnesses for the Crown were one and all substantially strangers to the preacher, and altogether unaccustomed to his manner, which, as you have heard, is so rapid and peculiar, as to render him nearly unintelligible to those to whom it is not familiar. Our witnesses, on the other hand, were all persons who were in the habit of attending his ministry. Some of them had been many months his hearers, and were quite familiar with the general strain of his remarks; and passages difficult to be followed by others, on account of the preacher's peculiarity of style, or infirmity of organs, were to them perfectly plain and intelligible. If, then, there had been any discrepancy in the evidence as to what he said on the occasion in question, those who understood the language he employed were, beyond all doubt, the best judges of what was meant by him when he may have been obscure and unintelligible to, or misunderstood by strangers.

But independently of this altogether, it is a circumstance, in this case, quite overwhelming and decisive, that the persons whom we ad-

duced as witnesses knew perfectly what was the general strain and tone of this gentleman's political observations. All of them were his hearers the whole time libelled on, and for many months before and afterwards, down to the period when he was apprehended. They were all familiar with the character of his topics, and the tone, temper, and import of his observations. Can you, then, hesitate to believe this set of witnesses in preference to the other? Can you hesitate to believe those who heard and understood all he said, and who swear positively to the words he employed?—and that too when their statement is precisely conformable to the strain that he had uniformly maintained for months and for years before? To hesitate between these two classes of witnesses would be to hesitate between the report of persons who understood a language, and persons who had but a smattering of it; or to construe an ambiguous expression without any reference to the general scope of the composition in which it occurred.

Some of the witnesses for the Crown went to Mr. Douglas's church in order to discover whether he uttered any thing improper or seditious; and is it to be supposed that *for them* he abandoned his usual course? It is proved that he had been accustomed to pray for, and to speak in favour of, the prince regent, and the royal family, for a long time before; and the persons who were quite aware, by previous experience, of the nature of his sentiments, language, and delivery, all speak positively as to what took place on that occasion, and on all other occasions. Their evidence, therefore, must completely annihilate and swallow up the contrary evidence; and that without supposing any malice or intentional mis-statement on the part of the witnesses for the Crown, some of whom were perfect strangers to Mr. Douglas, and others were sent to hear him with their minds biassed by the magistrates. I am not saying that it was improper to send them, but the errand upon which they were sent was an unpleasant one, and must naturally have biassed their minds.

The subject at which Mr. Douglas had arrived, in the course of his lectures, was the mental derangement and subsequent restoration of Nebuchadnezzar, and the incurable profligacy of his successor. Could any thing be more natural than for my client, when talking of the unhappy malady of that ancient sovereign, to be struck with what had happened to our own sovereign, and at one and the same time to draw a parallel between their situations, and a contrast between their characters—between the infidelity of Nebuchadnezzar and the piety of our king? He thought it fair and reasonable to point out what was similar in their situations and different in their characters. Is it necessary to suppose that, because he remarked a conformity in one point between Nebuchadnezzar and our sovereign, he maintained that this conformity existed as to all points? You have it proved,

by abundance of testimony that Mr. Douglas entertained the most loyal sentiments towards his sovereign, and that he fervently prayed for him three times a-day—that he expressed loyal sentiments in loyal language. It is proved he expressed a wish that our sovereign, like Nebuchadnezzar, might be relieved from his sufferings, and that the glories of his closing life might be greater than those of his early days.

Is it in any respect unusual or improper, that a minister of the gospel should make such an improvement and application of these remarkable events? But, at the same time, is there any thing more likely than that persons coming with a prepossession that they were to hear sedition, and finding a parallel drawn between Nebuchadnezzar and the sovereign of this country, should fall into the mistake of thinking, that the parallel extended to the whole history, and that when the preacher represented Nebuchadnezzar as cast down from the throne on account of his infidelity and sins, he made the same statement with regard to our king? The witnesses do not even pretend to remember the words which he used; and they plainly have no right to give their impressions instead of his words. They have an impression; but they did not remark, or do not recollect what was said. It is evident, therefore, that they are not giving testimony as to facts, but pronouncing judgment upon facts which they do not know. They are usurping your province, without any evidence before them; and even if they were entitled to go upon vague impressions without any distinct recollection, they should have been aware that it was impossible not to commit mistakes, prepossessed as they were, and exposed to the incalculable disadvantage of not hearing distinctly the words which were uttered.

The same observations apply to all the other parts of the case.

As to the House of Commons.—This gentleman's sentiments are no doubt in favour of reform in the Commons' House of Parliament. But he thought this reform should be set about only by constitutional means; and he had frequently taken occasion to exhort his hearers to abstain from violence. He was a friend to petitioning; but he stated that a prayer to God would have more effect than a body of armed men. I really cannot think that persons who advocate the cause of reform by such instruments and such means, are very dangerous reformers—or very fit objects for prosecution.

The whole strain of the evidence for the Crown is of the same nature upon that part of the indictment which relates to the administration of the law. The witnesses may have supposed he was talking of the administration of the law of this country, when he was speaking of other countries where it is notorious that men have been treated with injustice, and have been judicially murdered. One memorable proof of his sentiments in regard to the administration of the law in this country was

detailed to you in evidence. This reverend person was afflicted in his old age, by the misconduct and public arraignment of his son at this bar. He went, for the first time in his life, into a court of justice, to support his unhappy boy on that occasion; and coming home with lacerated feelings upon the event of the trial, he showed the healing effect of religion and patriotism; and, bowing under the dispensation of God, kissed the rod of divine chastisement, and next paid a tribute to the justice of the country, by which the liberties and lives of his majesty's subjects are guarded, and by which no person can be convicted without convincing proof of his guilt. In the course of that trial, being impressed with the solemnity and cautiousness of the proceedings, and with the impartiality and mercy with which the criminal law is administered in this tribunal, he took the earliest opportunity of delivering an encomium upon that law, under which he was then suffering in his feelings as a parent, on account of the ignominy and disgrace of his unhappy child.

In these circumstances, I say, he is entitled to a complete verdict of not guilty under this indictment: and I am persuaded, and think you must feel, that no issue can be attended with such good effects, or can be so likely to promote love of the constitution,—love of the law,—and duty to the sovereign, as that which shall send him home again to testify in favour of that law under which his son fell, and by which he is saved. It will be your duty to send him back with his character untainted, and his voice unimpaired, to praise more loudly than ever the blessings of that constitution under which he lives, and to inspire worthy and favourable sentiments on this subject into his hearers, who are stated to form a pretty numerous congregation.

And here I must take leave to intimate my dissent from what was said as to the duties of the clergy of this country. It is their first and appropriate office, no doubt, to teach the doctrines of religion and morality; but it is their privilege and function also to allude to our duties to government, as well as to those we owe our neighbours. In those cases especially, in which the hearers are indebted for all the information they receive to their attendance in church, there would be something wanting, if, besides the exhortations and spiritual advice which are afforded, allusions were not occasionally made to the public duties of the people, as well as to their other moral and religious obligations.

In the political sentiments of the defendant, affection for the constitution has always been the leading feature; and it is clear, from his whole discourses and character, that he was not given to disguise or concealment of any kind. The whole of his discourses have been remarkable for their loyalty, and respect for the constitution as by law established, and were such indeed as to be in all points characteristic of a good citizen.

You have no ground for hesitation, therefore, I conceive, in your verdict; and you will not do justice, if you do not send Mr. Douglas home with his reputation altogether unstained: which you can do in no other way than by a verdict acquitting him entirely of the charges, and pronouncing him not guilty.

Lord Justice Clerk.—I am extremely happy, that from the course this trial has taken, you are relieved from all anxiety with regard to the result. The Solicitor-general has stated, that he cannot ask you to find a verdict of guilty against the panel as to any part of the charges contained in the indictment. The only question for you to decide, on considering all that has taken place, is, whether you are entitled to express in the verdict your opinion that the prisoner is *not guilty* of the charges, by which you will free him from all blame, or whether you must limit yourselves to finding that the charges are *not proven*. In such a case, I should deviate from my duty, were I to say more than that the issue is in your hands, and that you will return that verdict which in your consciences you think right.

The jury retired; and, after a few minutes consideration, they returned an unanimous verdict of Not Guilty.

Lord Justice Clerk.—Gentlemen, I am happy to relieve you of any further attendance.

Neil Douglas, in consequence of the verdict which a jury of your country has returned, pronouncing you not guilty of the crime of sedition charged against you in this indictment, it is now the duty of the Court to *assolzie* you *simpliciter*, and to dismiss you from the bar.

It must always be a satisfaction to the Court, when the circumstances of any case are such as to warrant a verdict of not guilty. I congratulate you upon that verdict; but, at the same time, I feel it my duty to state to you, that, if you consider your interest in future, you will, in the discharge of your sacred functions, be careful in the selection of your topics. Notwithstanding the verdict which has been returned, I cannot at all commend the taste which you have shewn in selecting the subjects upon which you have been accustomed to dilate. I trust and hope, however, that you will see the propriety in future of selecting only those passages in Holy Writ, which, while they enable you to discharge your sacred functions to your God, may not give rise to comments susceptible of such a construction, as to lead hearers, even by mistake, to suppose that you utter or inculcate seditious sentiments.

Neil Douglas, attend to the interlocutor of the Court upon the verdict now to be read.

“The Jury, by the mouth of James Dundas their chancellor, find the said Neil Douglas, panel, Not Guilty.”

“The Lord Justice Clerk and Lords Commissioners of Justiciary, in respect of the verdict above recorded, *assolzie* the panel *simpliciter*, and dismiss him from the bar.”

“D. BOYLE, I. P. D.”

Neil Douglas.—I cannot refrain from declaring, before I leave this Court, that I have a high regard for his majesty and for the royal family, and I pray that every Briton may have the same. I return you and the whole Court and Jury cordial thanks for this decision.

702. The whole Proceedings on the Trial of ARTHUR THISTLEWOOD*, for High Treason, before the Court holden under a Special Commission, for the Trial of certain Offences therein mentioned, on the 17th, 18th, and 19th days of April: 1 GEO. IV. A. D. 1820.

ON Monday, the 27th. of March the Special Commission, was opened at the Sessions-House on Clerkenwell Green.

Present,

The Right Hon. Sir Charles Abbott, *knt.*: Lord Chief Justice of his majesty's Court of King's Bench.

The Rt. Hon. Sir Robert Dallas, *knt.*: Lord Chief Justice of his majesty's Court of Common Pleas; and others his majesty's Justices, &c.

* Concerning him see the case of James Watson the elder, in the preceding volume of this collection.

After the Commission had been read, the Sheriff delivered in the panel of the Grand Jury, when the following gentlemen were sworn:—

The Grand Jury.

Job Raikes, esq. Foreman.	J. H. Pakenham, esq.
John Stock, esq.	John Warren, gent.
Thomas Milroy, esq.	G. F. Young, ship-builder.
Robert Batson, esq.	B. Menceck, gent.
William Hills, gent.	Richard Jennings, esq.
H. Thompson, brewer.	James Taylor, esq.
Richard Gibbs, esq.	John Johnson, esq.
Thomas Lermette, esq.	Francis Dounce, esq.

James Gordon, esq.
W. Anderson, esq.
William Parry, esq.
John Booth, esq.

J. W. Horsley, esq.
W. Venning, gent.
Stephen Taylor, esq.

CHARGE.

Lord Chief Justice Abbott.—Gentlemen of the Grand Inquest; we are assembled in this place under the authority of his majesty's special commission, issued for the purpose of inquiring into and hearing and determining certain offences therein particularly mentioned:

These offences are,

First, all High Treasons, except such as relate to the coin:

Secondly, Misprisions of Treason:

Thirdly, The murder of one Richard Smithers, deceased, and any other crime or offence touching the death of that person:

Fourthly, All offences against the persons of Frederick Fitz-Clarence, William Legg, James Ellis, John Surman, William Westcoatt, William Charles Brooks, John Muddock, and Benjamin Gill, or any of them, contrary to the form of an Act passed in the 43rd year of the reign of his late majesty, for (amongst other things) the further prevention of malicious shooting and attempting to discharge loaded fire-arms, stabbing, cutting, and wounding.

It is my present duty to offer to your consideration some remarks upon each of these subjects, for your assistance in the exercise of the important functions that will presently devolve upon you, when bills of indictment shall be laid before you.

The particular kinds of Treason, to which it may be proper for me to call your attention, are in part to be found in the ancient Statute of the 25th year of the reign of King Edward the Third, and in part in a Statute, passed for very wise purposes, in the reign of his late majesty.*

By the former of these Statutes, it is declared to be Treason, if a man do compass or imagine the death of our lord the King; or if a man do levy war against our lord the King in his realm. By the latter Statute it is enacted, That if any person shall, within the realm or without, compass, imagine, invent, devise, or intend, death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint of the person of our lord the King; or to deprive or depose him from the style, honour, or kingly name of the imperial crown of this realm, or of any other his majesty's dominions or countries; or to levy war against his majesty within this realm, in order by force or constraint to compel him to change his measures or counsels; or in order to put any force or constraint upon or overawe both Houses

or either House of Parliament; every person so offending shall be deemed and adjudged to be a Traitor.

You will have observed that in the several descriptions of offence which I have enumerated (except the levying war mentioned in the ancient Statute) the crime is made to consist in the compassing, imagination, or intention (which are all words of the same import) to perpetrate the acts, and not in the actual perpetration of them. But it is further required, by the ancient Statute, that the party accused of high Treason shall be thereof proveably attainted of open deed; and by the modern Statute, that the party shall express, utter, or declare his intention, by publishing some printing or writing, or by some overt act or deed. The law has thus wisely provided (because the public safety requires it), that in cases of this kind, which manifestly tend to the most extensive public evil, the intention shall constitute the crime; but the law has at the same time with equal wisdom provided (because the safety of individuals requires it), that the intention shall be manifested by some act tending towards the accomplishment of the criminal object.

Before the passing of the late Statute it had been settled, by several cases actually adjudged, and by the opinions of the text-writers on this branch of the law, that all attempts to depose the King from his royal state and title, to restrain his person, or to levy war against him, and all conspiracies, consultations and agreements for the accomplishment of these objects, were overt acts of compassing and imagining the death of the King. By this Statute, the compassing or intending to commit these acts—that is, to depose his majesty, to restrain his person, or to levy war against him for the purposes that I have mentioned—is made a substantive treason; and thereby the law is rendered more clear and plain, both to those who are bound to obey it, and to those who are engaged in the administration of it. It may be proper for me to add, that it has been established, in the like manner, that the pomp and circumstances of military array, such as usually attend regular warfare, are by no means necessary to constitute an actual levying of war, within the true meaning of the ancient Statute. Insurrections and risings for the purpose of effecting, by force and numbers—however ill-arranged, provided or organized—any innovation of a public nature, or redress of supposed public grievances, in which the parties had no special or particular interest or concern, have been deemed instances of the actual levying of war; and, consequently, to compass or imagine such an insurrection, in order, by force and numbers, to compel his majesty to

* Stat. 36. G. 3rd, c. 7.

alter his measures or counsels, will be to compass or imagine the levying of war against his majesty for that purpose, within the just meaning of the modern Statute. Rebellion, at its first commencement, is rarely found in military discipline or array although a little success may soon enable it to assume them.

I have already intimated, that any act manifesting the criminal intention, and tending towards the accomplishment of the criminal object is, in the language of the law, an *overt act*. It will be obvious, that overt acts may be almost infinitely various; but in cases where the criminal object has not been accomplished, the overt acts have frequently consisted of meetings, consultations, and conferences about the object proposed, and the means of its accomplishment; agreements and promises of mutual support and assistance; incitement to others to become parties to, and engage in the scheme; assent to proposed measures; or the preparation of weapons or other things deemed necessary to their fulfilment. All these, and other matters of the like nature, are competent overt acts of the particular kind of treason—of the particular compassing and imagination to which they may happen to apply.

In High Treason the law acknowledges no accessaries; all who, in any way, or at any time, become partakers in the project, are considered as principals. And in conspiracies of a treasonable nature, as well as in inferior conspiracies, it will be found almost universally to happen, that some persons are active in forwarding one part of the means of executing the design, others another part; some are more zealous and ardent, others more cool and reserved; some engage themselves in an earlier, others in a later, stage of the confederacy; but the act of each individual, in pursuance and prosecution of the general design, is considered as the act of all who become privy and consenting to the design, although it may have taken place out of their presence, or even before they had engaged in the design; because, by their subsequent engagement, they adopt all that may have been previously done toward the promotion of the general object, which they ultimately engage to accomplish; all, I mean, that strictly and properly relates to the forwarding and fulfilment of that object.

From what has been said, it will appear that the *overt acts* are most important matters in a judicial investigation of any alleged treason; and the law requires in favour of the accused, that the overt acts, by the proof whereof the accusation is to be supported, shall be set forth on the indictment, in order that he may have

notice of them, and be prepared for his defence. But it is not required that all the articles, circumstances, and matters to be given in evidence should be disclosed by the indictment; it is enough that the act, whether of meeting, consultation, incitement, consent, preparation, or other matter, be charged with convenient certainty, leaving the proof of the act to be made out by suitable testimony in this, as in other cases. It is further required by Statute, that there shall be two witnesses to prove the overt acts; not two to one and the same overt act; but either two to one and the same overt act; or one to one overt act, and another to another overt act, of the same species of treason.

I should add that some one overt act must be proved to have taken place in the county wherein the bill of indictment is preferred, which is, in the present instance, the county of Middlesex. If this be done, the proof of other overt acts in other counties is to be received as competent to sustain the indictment. And if several overt acts be charged, satisfactory proof of any one in the proper county is sufficient.

Having made these general observations, it will be expected, that I should now advert in some manner to the particular case which is likely to become the subject of your inquiry. It is not my purpose, however, to enter into any detail of circumstances upon this subject to the extent even of the limited knowledge that I now possess. Such detail is not necessary for your guidance, and might by possibility operate injuriously upon the persons accused. It is, however, proper for me to describe the substance and general outline of the matters of fact that are likely to be laid before you, in order that my observations upon the law, as applicable to these or the like matters, may be rendered intelligible.

It has been supposed (and for the present you will consider what I am about to say as supposition only), that a conspiracy was formed to assassinate the several persons chiefly intrusted by his majesty with the administration of the affairs of his government, when they should be assembled at a dinner at the house of one of them on the 23rd of February last; and that other and more extensive measures of treasonable hostility against the existing government and constitution of this country were intended by the conspirators, to accompany and follow this intended assassination. It has further been supposed that, this design having by some means been discovered, several persons assembled for its almost immediate perpetration, were found together, in a stable or loft in an

obscure street, with arms and offensive weapons suitable to the accomplishment of the proposed assassination, and perhaps also of other traitorous purposes; that these persons resisted the peace officers by whom they were found, and the military who came to the aid of the officers; that in the course of their resistance and endeavours to escape (which as to many of them were for the time at least successful) Richard Smithers, one of the persons named in this commission, lost his life, by the act of one of those whom it was intended to arrest; and that pistols were discharged and weapons pointed against some or all of the other persons therein also named. Of these matters, or such as these, you have all, without doubt, previously heard and read; and I therefore take the liberty most earnestly to caution you to confine your attention, on the present occasion, to the evidence that will be laid before you, and to banish from your minds all such information as you may have previously received, either as to the nature or object of the supposed conspiracy, or as to the conduct or character of the particular individuals supposed to have participated in it, or to have been actors in these transactions.

Upon the law as applicable to these supposed matters of fact, I should tell you, that a conspiracy to murder a number of individuals, whether in a private or public station, however high or important the public station may happen to be, grounded only upon private malice harboured against them in the minds of the conspirators, and for the mere gratification of private revenge, and not meant to be accompanied or followed by any other act or matter, or to bring about any object of a public nature, however odious and criminal such a conspiracy may be, does not in law constitute the offence of high treason. But if the assassination be meant as the signal for or commencement of a tumultuous insurrection of large numbers of persons expected to join the conspirators, and with a view by force and numbers to take the government of the country into the hands of the leaders, or to compel the sovereign to adopt such measures as they may think fit to dictate to him, then the conspiracy to assassinate will assume a different character, and become an overt act of those species of treason, which consist in an intention to depose the King, or to levy war against him for one of the purposes before mentioned, and may also be an overt act of treason in compassing his death; because we know from experience, that the death of a sovereign has been the usual consequence of his deposition; and every person may reasonably be presumed to

contemplate and intend the probable and natural consequences of his own act, until the contrary be clearly shown.

If, therefore, a conspiracy to take away the lives of his majesty's ministers, either in the way that I have supposed, or in any other manner, shall be proved before you, you will naturally look out for some evidence manifesting the object and purpose to be attained; and in weighing the nature and effect of such evidence, you will doubtless bear in mind the number, rank and offices of the persons thus devoted to destruction. The difficulty of supposing an intended assassination to be grounded only upon private malice, and meant for the gratification of private revenge alone, without any further purpose or object, increases not only with the number of the conspirators, but also with the number of the intended victims: because, although history furnishes many examples of deep and deadly private malice and revenge, borne by one person, and adopted or aided by his family, dependants and friends, against another person, his family or clan; yet I believe an instance will scarcely be found of malice of a private nature entertained by any considerable number of persons not connected with each other by blood or other bond of private union, against any considerable number of other persons alike unconnected by any private circumstances of association. It is still more difficult to conceive a case of merely private revenge, limited and confined to the intended assassination alone, where the intended victims happen to be a number of persons conducting the administration of government, and not appearing to be known to the conspirators otherwise than by their public character offices and conduct. In such a case it is natural to suppose that the object in view must be of a more public and extensive nature than the mere gratification of vindictive feelings.

But the facility of one supposition, and the difficulty of the other, must not supply the place of proof; they only conduce to the reception of the proof that may be offered, and to the credibility of evidence tending to the manifestation of ulterior designs. Such ulterior designs, if they shall appear to be of the nature to which I have alluded, and to relate to the usurpation of the government of this nation, or of this metropolis alone, in opposition to the constituted authorities of the realm, even for a season, will appear to the calm eye of sober reason to be wild and hopeless: But you, gentlemen, know that rash and evil-minded men, brooding over their own bad designs, gradually lose sight of the difficulties that attend the accomplishment of their schemes, and

magnify the advantages to be derived from them. And as it is the natural character of vicious men to think others not less vicious than themselves, those who form wicked plans of a public nature easily believe that they shall have numerous supporters, if they can manifest at once their designs and their power by striking some one important blow. This belief leads, in some instances, to a rash and hasty communication of the wicked purpose to others, who are thought likely to adopt it and join in its execution, but who in fact are not prepared to do so, and thereby occasionally furnishes evidence against those, by whom the purpose has been engendered and communicated. Dark and deep designs are seldom fully developed, except to those who consent to become participators in them, and can therefore be seldom exposed and brought to light except by the testimony of accomplices. Such testimony is, as you well know, to be received on all occasions with great caution; it is to be carefully watched, deliberately weighed, and anxiously considered: it is competent in law to be received on all occasions; its credibility on each particular occasion depends on its own particular character, with reference to the matter to which it relates, and the confirmation it may receive from pure and unsuspected quarters, and on the probability of the facts related, rather than on the personal credit of the relator. He, who acknowledges himself to have become a party to a guilty purpose, does by that very acknowledgment depreciate his own personal character and credit. If, however, it should ever be laid down as a practical rule in the administration of justice, that the testimony of accomplices should be rejected as incredible, the most mischievous consequences must necessarily ensue; because it must not only happen that many heinous crimes and offences will pass unpunished, but great encouragement will be given to bad men, by withdrawing from their minds the fear of detection and punishment through the instrumentality of their partners in guilt, and thereby universal confidence will be substituted for that distrust of each other, which naturally possesses men engaged in wicked purposes, and which operates as one of the most effectual restraints against the commission of those crimes, to which the concurrence of several persons is required. No such rule is laid down by the law of England or of any other country. The credit of such testimony is, by the law of this country submitted, in the first instance, to those who, like you, are called together to exercise the functions of a grand jury, and, if received in the first instance, is then sub-

jected to the further and more perfect scrutiny of that other jury, who are finally to pronounce upon the guilt or innocence of the accused, after having heard both him and his accusers.

The next subject of inquiry, mentioned in this commission, is the offence denominated Misprision of Treason, which by the common law, is said to be, "when a person knows of a treason, though no party or consenter to it, yet conceals it, and doth not reveal it in convenient time."

In high treason, there are no accessaries, as in cases of felony; but all who in any way consent to become parties to the crime, are considered as principal traitors. High treason being an offence against the general safety of the state, it becomes every good and faithful subject, who may happen to have a knowledge of any traitorous design, to communicate such knowledge to some magistrate or other person in authority, in order that proper measures may be taken to prevent the accomplishment of the design.

The law, therefore, considers the wilful concealment of treason as an offence of very great magnitude, and has annexed to it very severe punishment; no less than the forfeiture of the goods of the criminal, the loss of the profits of his lands during life, and imprisonment during life.

But in a case to be followed by consequences so highly penal, there must, in order to constitute the crime, be a knowledge not only of the treason, but also of some at least of the traitors. He who has barely been informed of an intended insurrection, without any knowledge of the particular circumstances or persons, does not become a criminal by forbearing to communicate what he has so vaguely heard. And for the protection of persons accused of this crime, the statute requires that the treason, supposed to be concealed, shall be proved by two witnesses, both of them to one overt act, or one of them to one, and another of them to another act of the same treason, as is required in the case of those who are charged with the treason itself.

If any bill for this offence of misprision shall be presented to you, it may be presumed that the treason charged will be of the same kind, and arising out of the same matters as that upon which I have already addressed you.

You will understand, that it cannot be necessary to inquire into the knowledge or concealment, until you shall be first satisfied of the treason; and if you shall be satisfied of that, then I have no doubt you will conduct the further inquiry with all the care and caution that a matter so highly penal requires at your hands.

Concealment, as you well know, is properly a negative fact; and therefore, if the treason and the knowledge of it be proved, and the knowledge shown to have existed at such a time, and under such circumstances, as afforded a reasonable opportunity for discovery, the proof of a discovery lies properly upon the party charged, though on the one hand, there may possibly be circumstances from which a discovery may be inferred, and on the other hand, there may be circumstances manifesting an intention to conceal, and consequently excluding any presumption in your minds in favour of the accused, though not excluding the proof of a discovery, before the jury by whom the party may be tried, if he shall be able to offer it, when he makes his defence against the charge.

The consideration of all such circumstances may, I am persuaded, gentlemen, be very safely entrusted to you, so far as your duty extends, without further observation on my part.

The third subject of inquiry, is the murder of Richard Smithers, or any other crime or offence touching the death of that person.

This is the person who is supposed to have lost his life on the occasion of the attempt made to arrest some of those who are now in custody under a charge of high treason. It will therefore be material for you to direct your attention to the place, the time, and the circumstances under which that attempt to arrest was made.

The caution required by the law of England in the conduct of officers and ministers of justice proceeding to arrest for criminal matters persons who may happen to be in a *dwelling-house, whereof the doors are closed*, is confined to a *dwelling-house* alone. All other buildings, or places of meeting, may lawfully be opened and entered for the purpose of arresting criminals, without any notification of the purpose previously made; and the persons who may be found within, deriving no protection from the place where they are found, are bound to yield themselves upon the same demand or notification as if they were met with in the field or open street; and this need only be in the first instance a general notification of the character and purpose of the officers, conveyed in any words, or in any form or manner, that may be intelligible to those who hear or see them. If the persons thus required to submit desire farther information as to the authority to which they are called upon to yield, it behoves them to demand it; for, if after such notification they resort to instant resistance, and to the use of deadly weapons, and happen to slay any of those to whom they are required to

yield, they do so at their own peril; and provided their arrest would be lawful, then he by whom a death-wound may be inflicted, and all who unite with him in the resistance, become guilty of the crime of murder.

An arrest, under the authority of the warrant of a competent magistrate, for a criminal matter specified in the warrant, by any of the persons named therein, and by any others whom they may take to their aid, is a lawful arrest. So also is an arrest by peace officers, without warrant, for felony, or other higher crime actually committed or reasonably alleged to them to have been committed by the persons arrested. So likewise is an arrest by such officers of persons actually engaged in any breach of the peace; or of persons assembled, and arming, and preparing themselves for the immediate perpetration of murder, or other felony; because such assembling and preparation are in themselves criminal acts, and the arrest of the persons assembled may, in many cases, be absolutely necessary for the prevention of the accomplishment of their still more criminal purpose.

I have mentioned these instances of arrest and resistance, because I apprehend the cases likely to be submitted to your consideration will fall within one or other of them.

But, in order that no inference may be drawn from my silence on another topic, it seems proper to add, that it must by no means be taken for granted, that persons required to yield themselves to officers of the peace, even in case the officers be not duly authorized to arrest them, may instantly and before any actual assault on their persons, and without warning to the officers to withdraw or stand off, attack with deadly weapons and slay the officers, without subjecting themselves to the crime of murder. A killing, under such circumstances, would undoubtedly be manslaughter at the least; and as the circumstances appear to denote a wicked heart, a mind grievously depraved, and motives highly criminal (which is the general notion of malice in our law), such a case, if ever it shall unfortunately happen, will require grave and serious consideration.

In speaking of those who may become guilty of murder, by the slaying of an officer under the circumstances that I have mentioned, you will bear in mind that I used the expression, "all who unite in resistance with him who gave the death blow."

I used these words, because where several persons are assembled for any purpose, be it lawful or unlawful, and something wholly unexpected and foreign to the general design happens to occur on the sudden, upon which one or more

fly to arms, and death ensues, those who take no part in such new and unexpected occurrence are not to be involved in the guilt of their companions, as they may be in the case of an unlawful act committed in furtherance and prosecution of their general design.

If, therefore, an indictment against several persons for this alleged murder shall be submitted to your consideration, you will attend to the conduct of the different individuals charged therewith throughout the whole course of the evidence that may be laid before you on such indictment; to their conduct before the meeting at that particular place; to the act and manner of assembling in that place, and to their behaviour there, as well at the first appearance of the officers as afterwards, until the final arrest or escape of those who were originally assembled; and you will judge from the conduct of each how far, in your opinion, he may have concurred in that resistance, wherein the death of this person unfortunately ensued.

Having said so much on the third subject of inquiry, very little remains to be added on the fourth and last: which comprises all offences against the persons of Frederick Fitz-Clarence, William Legg, James Ellis, John Surman, William Westcott, William Charles Brooks, John Muddock, and Benjamin Gill, contrary to the form of an act passed in the 43rd year of the reign of his late majesty, the title whereof is set forth at length in the commission. So that you will observe that the jurisdiction given by this commission does not extend generally to all offences against the persons of the individuals before-named, nor to all offences against the form of the statute therein mentioned, but is limited to such offences against these persons as are contrary to the form of that statute.* That statute is one which has probably been brought under the view of many, if not all of you, on former occasions, so that I need trouble you the less upon it.

It is thereby enacted, that if any person or persons shall wilfully, maliciously, and unlawfully shoot at any of his majesty's subjects, or shall wilfully, maliciously, and unlawfully present, point or level any kind of loaded fire arms against any of his majesty's subjects, and attempt by drawing a trigger or in any other manner to discharge the same at or against his or their person or persons; or shall wilfully, maliciously, and unlawfully stab or cut any of his majesty's subjects, with intent in so doing, or by means thereof, to murder or rob, or to maim, disfigure or disable such

subject or subjects, or with intent to resist or prevent the lawful apprehension and detainer of the person or persons so stabbing or cutting, or the lawful apprehension and detainer of any of his, her, or their accomplice or accomplices, for any offences for which he, she, or they may respectively be liable by law to be apprehended, imprisoned, or detained; in every such case, the person or persons so offending, their counsellors, aiders and abettors, knowing of, and privy to, such offence, shall be declared to be felons without benefit of clergy.

There is, however, an express proviso or exception (which probably would have been implied from the language of the enacting part itself), that if the act be committed under such circumstances as that if death had ensued therefrom the same would not in law have amounted to the crime of murder, the person indicted shall be acquitted of the felony.

As the cases likely to be presented to your consideration upon this statute will have arisen out of the resistance made to the peace officers, and to the military or other persons who sooner or later came to their aid, to which I have already referred, it will be obvious to you, that the observations which I have already offered upon the subject of arrest and resistance, in relation to the death of Richard Smithers, may in general be applied to this part also of your inquiry, and it is unnecessary for me to repeat them here.

If there should be an instance of any of those malicious acts mentioned in the statute committed, not in resistance of the intended arrest, or in the endeavour to escape, but wantonly and wilfully against the persons of any of the individuals named in the commission, by any person not intended to be arrested, or who had so far effectually escaped as to be for the time out of all danger of immediate arrest, such act, if any such there be, can hardly be attributed to any other motive than a malicious design to murder, or do some grievous bodily harm to the person who was the object of it, and therefore can hardly fail to be a felonious act, within the description of this statute; except, indeed, it shall appear to have been the hasty result of a contest with unlawful aggressors, wherein the blood may have been so far heated as to reduce the crime to manslaughter, if death had ensued: but as I do not apprehend that any case of this nature is likely to come before you, I forbear to trouble you with any remarks upon it; being well assured that in this case, if it shall occur, as in all other parts of the important duty for the discharge of which you are assembled, the best security for a due execution of the trust reposed in you, is to be found in your own good

* 43 Geo. III. c. 58, commonly called *Lord Ellenborough's Act*.

sense, and in your own general knowledge, temper, and discretion.

If, however, any unexpected difficulty shall arise in the progress of your investigations, the court will be at all times ready to assist you with such further advice as you may have occasion to require.

Gentlemen, having detained you so long, with such observations as I thought necessary to offer to your consideration, you will now withdraw to your chamber to consider of such Bills as may be laid before you.

On Tuesday, March the 28th, the grand jury returned a true bill against Arthur Thistlewood, William Davidson, James Ings, John Thomas Brunt, Richard Tidd, James William Wilson, John Harrison, Richard Bradburn, John Shaw Strange, James Gilchrist, and Charles Cooper, for High Treason.

The Court, on the motion of Mr. Attorney General, ordered that the Sheriff should deliver to the solicitor for the prosecution, a list of persons qualified to serve on Juries upon trials for High Treason to be returned for the trial of the defendants, and directed that notice should be given to each of the prisoners, that an indictment was found against him, and that on application to any of the judges named in the commission, counsel would be assigned to him, and an order made for such counsel and his solicitor to have access; which notice was given accordingly.

On Wednesday, the 29th of March, the grand jury returned a true bill against Arthur Thistlewood, John Thomas Brunt, Richard Tidd, James William Wilson, John Harrison, and John Shaw Strange, for the murder of Richard Smithers.

A true bill against Arthur Thistlewood, for maliciously shooting at William Westcoatt.

A true bill against James Ings, for maliciously shooting at William Charles Brooks.

A true bill against Richard Tidd, for maliciously shooting at William Legg.

A true bill against James William Wilson for drawing the trigger of a loaded pistol, with intent to shoot John Muddock.

On the 3rd of April, Mr. Maule, solicitor for the treasury, delivered to each of the prisoners a copy of the caption, and of the indictment for High Treason, a list of the Jury for their trial, and a list of the witnesses to be produced on their trial for proving the said indictment.

On Friday, the 14th of April, Arthur Thistlewood, William Davidson, James Ings, John Thomas Brunt, Richard Tidd, James William Wilson, and John Harrison, were removed by Habeas Corpora from

the Tower to Newgate, and Richard Bradburn, John Shaw Strange, James Gilchrist, and Charles Cooper were delivered by the governor of the House of Correction for the county of Middlesex into the custody of the keeper of Newgate.

SESSIONS HOUSE, OLD BAILEY.

SATURDAY, APRIL 15th, 1820.

Present,

The Right Hon. Lord Chief Justice Abbott.

The Right Hon. Lord Chief Justice Dallas.

The Right Hon. The Lord Chief Baron [Sir R. Richards.]

The Hon. Mr. Justice Richardson.

The Common Sergeant.

And other His Majesty's Justices, &c.

The several indictments found under special Commission, were delivered into court with the following Caption :

Caption. } BE IT REMEMBERED That at a
Middlesex } special session of Oyer and
to wit. } Terminer of our sovereign
lord the king of and for the county of Middlesex holden at the Session House on Clerkenwell Green in the said county on Monday the twenty-seventh day of March in the first year of the reign of our sovereign lord George the fourth by the grace of God of the united kingdom of Great Britain and Ireland King Defender of the Faith before the Right Honourable Sir Charles Abbott Knight Chief Justice of our said lord the King assigned to hold pleas before the King himself Sir Robert Dallas Knight Chief Justice of our said lord the King of his court of Common Pleas and others their Fellows Justices and commissioners of our said lord the King assigned by letters patent of our said lord the King under his great seal of the united kingdom of Great Britain and Ireland made to them and others and any two or more of them (of whom one of them the aforesaid Sir Charles Abbott and Sir Robert Dallas amongst others in the said letters patent named our said lord the King willed should be one) to inquire by the oath of good and lawful men of the county of Middlesex of all high treasons and misprisions of high treason (other than such as relate to the coin) and of the murder of one Richard Smithers deceased and of any other crime or offence touching the death of the said Richard Smithers and of any offence or offences against touching or concerning the persons of Frederick Fitz-Clarence William Legg James Ellis John Surman William Westcoatt William Charles Brooks John Muddock and Benjamin Gill or any of them contrary to the form of an act made and passed in the forty-third year of the reign of his late majesty

King George the third intituled "An act for the further prevention of malicious shooting and attempting to discharge loaded fire arms stabbing cutting wounding poisoning and the malicious using of means to procure the miscarriage of women and also the malicious setting fire to buildings and also for repealing a certain act made in England in the twenty-first year of the late King James the first intituled "An act to prevent the destroying and murdering of bastard children" and also an act made in Ireland in the sixth year of the reign of the late Queen Anne, also intituled "An act to prevent the destroying and murdering of bastard children, and for making other provisions in lieu thereof" and also the accessories of them or any of them within the county aforesaid as well within liberties, as without, by whomsoever and in what manner soever done committed or perpetrated when how and after what manner And of all other articles and circumstances concerning the premises and every or any of them in any manner whatsoever and the said treasons and other the premises according to the laws and customs of England for this time to hear and determine by the oath of Job Raikes esquire John Stock esquire Thomas Milroy esquire Robert Batson esquire William Hills gentleman Henry Thompson brewer Richard Gibbs esquire Thomas Lermette esquire James Gordon esquire William Anderson esquire William Parry esquire John Booth esquire John Henry Pakenham esquire John Warren gentleman George Frederick Young shipbuilder Robert Meacock gentleman Richard Jennings esquire James Taylor esquire John Johnson esquire Francis Douce esquire John William Horsley esquire William Venning gentleman and Stephen Taylor esquire good and lawful men of the county aforesaid now here sworn and charged to inquire for our said lord the King for the body of the said county touching and concerning the premises in the said letters patent mentioned It is presented in manner and form as followeth (that is to say)

Middlesex } The jurors for our lord the
to wit. } King upon their oath present
that Arthur Thistlewood late of the parish
of Saint Clement Danes in the county of
Middlesex gentleman William Davidson
late of the parish of Saint Marylebone in
the county of Middlesex labourer James
Ings late of London labourer John Thomas
Brunt late of the parish of Saint Andrew
Holborn in the county of Middlesex
labourer Richard Tidd late of the parish
of Saint Andrew Holborn in the county of
Middlesex labourer James William Wilson
late of the parish of Saint Marylebone in

the county of Middlesex labourer John Harrison late of the parish of Saint Marylebone in the county of Middlesex labourer Richard Bradburn late of the parish of Saint Giles-in-the-fields in the county of Middlesex labourer John Shaw Strange late of London labourer James Gilchrist late of London labourer and Charles Cooper late of London labourer being subjects of our said lord the King not having the fear of God in their hearts nor weighing the duty of their allegiance but being moved and seduced by the instigation of the devil as false traitors against our said lord the King and wholly withdrawing the love obedience fidelity and allegiance which every true and faithful subject of our said lord the King should and of right ought to bear towards our said lord the King on the fifth day of February in the first year of the reign of our said present sovereign lord George the fourth by the grace of God of the united kingdom of Great Britain and Ireland King Defender of the Faith and on divers other days and times as well before as after with force and arms at the parish of Saint Marylebone in the county of Middlesex maliciously and traitorously amongst themselves and together with divers other false traitors whose names are to the said jurors unknown did compass imagine invent devise and intend to deprive and depose our said lord the King of and from the style honour and kingly name of the imperial crown of this realm and the said compassing imagination invention device and intention did then and there express utter and declare by divers overt acts and deeds hereinafter mentioned that is to say IN ORDER TO FULFIL perfect and bring to effect their most evil and wicked treason and treasonable compassing imagination invention device and intention aforesaid they the said Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist and Charles Cooper as such false traitors as aforesaid on the said fifth day of February in the first year of the reign aforesaid and on divers other days and times as well before as after with force and arms at the said parish of Saint Marylebone in the said county of Middlesex maliciously and traitorously did assemble meet conspire and consult amongst themselves and together with divers other false traitors whose names are to the said jurors unknown to devise arrange and mature plans and means to subvert and destroy the constitution and government of this realm as by law established AND FURTHER TO FULFIL perfect and bring to effect their most evil and wicked treason and treasonable compassing imagination

invention device and intention aforesaid they the said Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist, and Charles Cooper as such false traitors as aforesaid on the said fifth day of February in the first year of the reign aforesaid and on divers other days and times as well before as after with force and arms at the said parish of Saint Marylebone in the said county of Middlesex maliciously and traitorously did assemble meet conspire consult and agree amongst themselves and together with divers other false traitors whose names are to the said jurors unknown to stir up raise make and levy insurrection rebellion and war against our said lord the King within this realm and to subvert and destroy the constitution and government of this realm as by law established AND FURTHER TO FULFIL perfect and bring to effect their most evil and wicked treason and treasonable compassing imagination invention device and intention aforesaid they the said Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist and Charles Cooper as such false traitors as aforesaid on the said fifth day of February in the first year of the reign aforesaid and on divers other days and times as well before as after with force and arms at the said parish of Saint Marylebone in the said county of Middlesex maliciously and traitorously did assemble meet conspire consult and agree amongst themselves and together with divers other false traitors whose names are to the said jurors unknown to assassinate kill and murder divers of the privy council of our said lord the King employed by our said lord the King in the administration of the affairs and government of this kingdom AND FURTHER TO FULFIL perfect and bring to effect their most evil and wicked treason and treasonable compassing imagination invention device and intention aforesaid they the said Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist and Charles Cooper as such false traitors as aforesaid on the said fifth day of February in the first year of the reign aforesaid and on divers other days and times as well before as after with force and arms at the said parish of Saint Marylebone in the said county of Middlesex maliciously and traitorously did procure provide and have divers large quantities of arms to wit guns muskets blunderbusses pistols swords bayonets pikes

pikeshooters and pikeheads and divers large quantities of ammunition to wit gunpowder leaden bullets slugs and hand-grenades with intent therewith to arm themselves and other false traitors in order to assassinate kill and murder divers of the privy council of our said lord the King employed by our said lord the King in the administration of the affairs and government of this kingdom AND FURTHER TO FULFIL perfect and bring to effect their most evil and wicked treason and treasonable compassing imagination invention device and intention aforesaid they the said Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist and Charles Cooper as such false traitors as aforesaid on the said fifth day of February in the first year of the reign aforesaid and on divers other days and times as well before as after with force and arms at the said parish of Saint Marylebone in the said county of Middlesex maliciously and traitorously did procure provide and have divers large quantities of arms to wit guns muskets blunderbusses pistols swords bayonets pikes pikeshooters and divers large quantities of ammunition to wit gunpowder leaden bullets slugs and hand-grenades with intent therewith to arm themselves and other false traitors in order to raise make and levy insurrection rebellion and war against our said lord the King within this realm and to subvert and destroy the constitution and government of this realm as by law established AND FURTHER TO FULFIL perfect and bring to effect their most evil and wicked treason and treasonable compassing imagination invention device and intention aforesaid they the said Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist and Charles Cooper as such false traitors as aforesaid on the said fifth day of February in the first year of the reign aforesaid and on divers other days and times as well before as after with force and arms at the said parish of Saint Marylebone in the said county of Middlesex maliciously and traitorously did assemble meet conspire consult and agree amongst themselves and together with divers other false traitors whose names are to the said jurors unknown to seize and take possession of divers cannon warlike weapons arms and ammunition in divers places deposited and being with intent by and with the said cannon warlike weapons arms and ammunition to arm themselves and other false traitors and to raise levy and make insurrection rebellion and war

against our said lord the King within this realm and to subvert and destroy the constitution and government of this realm as by law established AND FURTHER TO FULFIL perfect and bring to effect their most evil and wicked treason and treasonable compassing imagination invention device and intention aforesaid they the said Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist and Charles Cooper as such false traitors as aforesaid on the said fifth day of February in the first year of the reign aforesaid and on divers other days and times as well before as after with force and arms at the said parish of Saint Marylebone in the said county of Middlesex maliciously and traitorously did assemble meet conspire consult and agree amongst themselves and together with divers other false traitors whose names are to the said jurors unknown to set fire to burn and destroy divers houses and buildings in and in the neighbourhood of London and divers barracks of our said lord the King used for the reception and residence of the soldiers troops and forces of our said lord the King and to provide and prepare divers combustibles and materials for the purpose of setting fire to burning and destroying the said houses buildings and barracks AND FURTHER TO FULFIL perfect and bring to effect their most evil and wicked treason and treasonable compassing imagination invention device and intention aforesaid they the said Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist and Charles Cooper as such false traitors as aforesaid on the said fifth day of February in the first year of the reign aforesaid and on divers other days and times as well before as after with force and arms at the said parish of Saint Marylebone in the said county of Middlesex maliciously and traitorously did compose and prepare and cause and procure to be composed and prepared with intent to publish the same divers addresses proclamations declarations and writings containing therein solicitations and incitements to the liege subjects of our said lord the King to aid and assist in making and levying insurrection rebellion and war against our said lord the King within this realm and in subverting and destroying the constitution and government of this realm as by law established AND FURTHER TO FULFIL perfect and bring to effect their most evil and wicked treason and treasonable compassing imagination invention device and intention aforesaid they the said

Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist and Charles Cooper as such false traitors as aforesaid on the said fifth day of February in the first year of the reign aforesaid with force and arms at the said parish of Saint Marylebone in the said county of Middlesex maliciously and traitorously did compose and prepare and cause and procure to be composed and prepared a certain paper writing purporting to be an address to the liege subjects of our said lord the King containing therein that their tyrants were destroyed and that the friends of liberty were called upon to come forward as the provisional government was then sitting with intent to publish the same and thereby to solicit and incite the liege subjects of our said lord the King to aid and assist in making and levying insurrection rebellion and war against our said lord the King within this realm and in subverting and destroying the constitution and government of this realm as by law established AND FURTHER TO FULFIL perfect and bring to effect their most evil and wicked treason and treasonable compassing imagination invention device and intention aforesaid they the said Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist and Charles Cooper as such false traitors as aforesaid on the twenty-third day of February in the first year of the reign aforesaid with force and arms at the said parish of Saint Marylebone in the said county of Middlesex maliciously and traitorously together with divers other false traitors whose names are to the said jurors unknown did assemble themselves with arms that is to say with guns muskets blunderbusses pistols swords bayonets pikes and other weapons with intent to assassinate kill and murder divers of the privy council of our said lord the King employed by our said lord the King in the administration of the affairs and government of this kingdom and to raise make and levy insurrection rebellion and war against our said lord the King within this realm and to subvert and destroy the constitution and government of this realm as by law established AND FURTHER TO FULFIL perfect and bring to effect their most evil and wicked treason and treasonable compassing imagination invention device and intention aforesaid they the said Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist and Charles Cooper as such false traitors

as aforesaid on the said twenty-third day of February in the first year of the reign aforesaid and on divers other days and times as well before as after with force and arms at the said parish of Saint Marylebone in the said county of Middlesex together with divers other false traitors whose names are to the said jurors unknown armed and arrayed in a warlike manner that is to say with guns muskets blunderbusses pistols swords bayonets pikes and other weapons maliciously and traitorously did ordain prepare levy and make public war against our said lord the King within this realm in contempt of our said lord the King and his laws to the evil example of all others contrary to the duty of the allegiance of them the said Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist and Charles Cooper against the form of the Statute in such case made and provided and against the peace of our said lord the King his crown and dignity.

Second Count.—And the jurors aforesaid upon their oath aforesaid do further present that the said Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist and Charles Cooper being subjects of our said lord the King not having the fear of God in their hearts nor weighing the duty of their allegiance but being moved and seduced by the instigation of the devil as false traitors against our said lord the King and wholly withdrawing the love obedience fidelity and allegiance which every true and faithful subject of our said lord the King should and of right ought to bear towards our said lord the King on the fifth day of February in the first year of the reign aforesaid and on divers other days and times as well before as after with force and arms at the said parish of Saint Marylebone in the said county of Middlesex maliciously and traitorously amongst themselves and together with divers other false traitors whose names are to the said jurors unknown did compass imagine and intend to move and excite insurrection rebellion and war against our said lord the King within this realm and to subvert and alter the legislature rule and government now duly and happily established within this realm and to bring and put our said lord the King to death [The indictment then states the same eleven overt acts charged in the first Count].

Third Count.—And the jurors aforesaid upon their oath aforesaid do further present that the said Arthur Thistlewood

William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist and Charles Cooper being subjects of our said lord the King not having the fear of God in their hearts nor weighing the duty of their allegiance but being moved and seduced by the instigation of the devil as false traitors against our said lord the King and wholly withdrawing the love obedience fidelity and allegiance which every true and faithful subject of our said lord the King should and of right ought to bear towards our said lord the King on the said fifth day of February in the first year of the reign aforesaid and on divers other days and times as well before as after with force and arms at the said parish of Saint Marylebone in the said county of Middlesex maliciously and traitorously amongst themselves and together with divers other false traitors whose names are to the said jurors unknown did compass imagine invent devise and intend to levy war against our said lord the King within this realm in order by force and constraint to compel him to change his measures and counsels and the said last-mentioned compassing imagination invention device and intention did then and there express utter and declare by divers overt acts and deeds hereinafter mentioned (that is to say) IN ORDER TO FULFIL perfect and bring to effect their most evil and wicked treason and treasonable compassing imagination invention device and intention last aforesaid they the said Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist and Charles Cooper as such false traitors as last aforesaid on the said fifth day of February in the first year of the reign aforesaid and on divers other days and times as well before as after with force and arms at the said parish of Saint Marylebone in the said county of Middlesex maliciously and traitorously did assemble meet conspire and consult amongst themselves and together with divers other false traitors whose names are to the said jurors unknown to devise arrange and mature plans and means by force and constraint to compel our said lord the King to change his measures and counsels AND FURTHER TO FULFIL perfect and bring to effect their most evil and wicked treason and treasonable compassing imagination invention device and intention last aforesaid they the said Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist and Charles

Cooper as such false traitors as last aforesaid on the said fifth day of February in the first year of the reign aforesaid and on divers other days and times as well before as after with force and arms at the said parish of Saint Marylebone in the said county of Middlesex maliciously and traitorously did assemble meet conspire consult and agree amongst themselves and together with divers other false traitors whose names are to the said jurors unknown to stir up raise make and levy insurrection rebellion and war against our said lord the King within this realm AND FURTHER TO FULFIL perfect and bring to effect their most evil and wicked treason and treasonable compassing imagination invention device and intention last aforesaid they the said Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist and Charles Cooper as such false traitors as last aforesaid on the said fifth day of February in the first year of the reign aforesaid and on divers other days and times as well before as after with force and arms at the said parish of Saint Marylebone in the said county of Middlesex maliciously and traitorously did assemble meet conspire consult and agree amongst themselves and together with divers other false traitors whose names are to the said jurors unknown to assassinate kill and murder divers of the privy council of our said lord the King employed by our said lord the King in the administration of the affairs and government of this kingdom AND FURTHER TO FULFIL perfect and bring to effect their most evil and wicked treason and treasonable compassing imagination invention device and intention last aforesaid they the said Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist and Charles Cooper as such false traitors as last aforesaid on the said fifth day of February in the first year of the reign aforesaid and on divers other days and times as well before as after with force and arms at the said parish of Saint Marylebone in the said county of Middlesex maliciously and traitorously did procure provide and have divers large quantities of arms to wit guns muskets blunderbusses pistols swords bayonets pikes pikehandles and pikeheads and divers large quantities of ammunition to wit gunpowder leaden bullets slugs and handgrenades with intent therewith to arm themselves and other false traitors in order to assassinate kill and murder divers of the privy council of our said lord the King employed by our said lord the King

in the administration of the affairs and government of this kingdom AND FURTHER TO FULFIL perfect and bring to effect their most evil and wicked treason and treasonable compassing imagination invention device and intention last aforesaid they the said Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist and Charles Cooper as such false traitors as last aforesaid on the said fifth day of February in the first year of the reign aforesaid and on divers other days and times as well before as after with force and arms at the said parish of Saint Marylebone in the said county of Middlesex maliciously and traitorously did procure provide and have divers large quantities of arms to wit guns muskets blunderbusses pistols swords bayonets pikes pikehandles and pikeheads and divers large quantities of ammunition to wit gunpowder leaden bullets slugs and handgrenades with intent therewith to arm themselves and other false traitors in order to raise make and levy insurrection rebellion and war against our said lord the King within this realm AND FURTHER TO FULFIL perfect and bring to effect their most evil and wicked treason and treasonable compassing imagination invention device and intention last aforesaid they the said Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist and Charles Cooper as such false traitors as last aforesaid on the said fifth day of February in the first year of the reign aforesaid and on divers other days and times as well before as after with force and arms at the said parish of Saint Marylebone in the said county of Middlesex maliciously and traitorously did assemble meet conspire consult and agree amongst themselves and together with divers other false traitors whose names are to the said jurors unknown to seize and take possession of divers cannon warlike weapons arms and ammunition in divers places deposited and being with intent by and with the said cannon warlike weapons arms and ammunition to arm themselves and other false traitors and to raise levy and make insurrection rebellion and war against our said lord the King within this realm AND FURTHER TO FULFIL perfect and bring to effect their most evil and wicked treason and treasonable compassing imagination invention device and intention last aforesaid they the said Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John

Shaw Strange James Gilchrist and Charles Cooper as such false traitors as last aforesaid on the said fifth day of February in the first year of the reign aforesaid and on divers other days and times as well before as after with force and arms at the said parish of Saint Marylebone in the said county of Middlesex maliciously and traitorously did assemble meet conspire consult and agree amongst themselves and together with divers other false traitors whose names are to the said jurors unknown to set fire to burn and destroy divers houses and buildings in and in the neighbourhood of London and divers barracks of our said lord the King used for the reception and residence of the soldiers troops and forces of our said lord the King and to provide and prepare divers combustibles and materials for the purpose of setting fire to burning and destroying the said houses buildings and barracks AND FURTHER TO FULFIL perfect and bring to effect their most evil and wicked treason and treasonable compassing imagination invention device and intention last aforesaid they the said Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist and Charles Cooper as such false traitors as last aforesaid on the said fifth day of February in the first year of the reign aforesaid and on divers other days and times as well before as after with force and arms at the said parish of Saint Marylebone in the said county of Middlesex maliciously and traitorously did compose and prepare and cause and procure to be composed and prepared with intent to publish the same divers addresses proclamations declarations and writings containing therein solicitations and incitements to the liege subjects of our said lord the King to aid and assist in making and levying insurrection rebellion and war against our said lord the King within this realm AND FURTHER TO FULFIL perfect and bring to effect their most evil and wicked treason and treasonable compassing imagination invention device and intention last aforesaid they the said Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist and Charles Cooper as such false traitors as last aforesaid on the said twenty-third day of February in the first year of the reign aforesaid with force and arms at the said parish of Saint Marylebone in the said county of Middlesex maliciously and traitorously together with divers other false traitors whose names are to the said jurors unknown did assemble themselves

with arms (that is to say) with guns muskets blunderbusses pistols swords bayonets pikes and other weapons with intent to assassinate kill and murder divers of the privy council of our said lord the King employed by our said lord the King in the administration of the affairs and government of this kingdom and to raise make and levy insurrection rebellion and war against our said lord the King within this realm AND FURTHER TO FULFIL perfect and bring to effect their most evil and wicked treason and treasonable compassing imagination invention device and intention last aforesaid they the said Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist and Charles Cooper as such false traitors as last aforesaid on the said twenty-third day of February in the first year of the reign aforesaid and on divers other days and times as well before as after with force and arms at the said parish of Saint Marylebone in the said county of Middlesex together with divers other false traitors whose names are to the said jurors unknown armed and arrayed in a warlike manner (that is to say) with guns muskets blunderbusses pistols swords bayonets pikes and other weapons maliciously and traitorously did ordain prepare levy and make public war against our said lord the King within this realm in contempt of our said lord the King and his laws to the evil example of all others contrary to the duty of the allegiance of them the said Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist and Charles Cooper, against the form of the statute in such case made and provided and against the peace of our said lord the King his crown and dignity.

Fourth Count.—And the jurors aforesaid upon their oath aforesaid do further present That the said Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist and Charles Cooper being subjects of our said lord the King not having the fear of God in their hearts nor weighing the duty of their allegiance but being moved and seduced by the instigation of the devil as false traitors against our said lord the King; and wholly withdrawing the love obedience fidelity and allegiance which every true and faithful subject of our said lord the King should and of right ought to bear towards our said lord the King on the said twenty-third day of February

in the first year of the reign aforesaid with force and arms at the said parish of Saint Marylebone in the said county of Middlesex together with divers other false traitors whose names are to the said jurors unknown armed and arrayed in a warlike manner (that is to say) with guns muskets blunderbusses pistols swords bayonets pikes and other weapons being then and there unlawfully maliciously and traitorously assembled and gathered together against our said lord the King most wickedly maliciously and traitorously did levy and make war against our said lord the King within this realm and did then and there maliciously and traitorously attempt and endeavour by force and arms to subvert and destroy the constitution and government of this realm as by law established and to deprive and depose our said lord the King of and from the style honour and kingly name of the imperial crown of this realm in contempt of our said lord the King and his laws to the evil example of all others contrary to the duty of the allegiance of them the said Arthur Thistlewood William Davidson James Ings John Thomas Brunt Richard Tidd James William Wilson John Harrison Richard Bradburn John Shaw Strange James Gilchrist and Charles Cooper against the form of the statute in such case made and provided and against the peace of our said lord the King his crown and dignity.

The prisoners, Arthur Thistlewood, William Davidson, James Ings, John Thomas Brunt, Richard Tidd, James William Wilson, John Harrison, Richard Bradburn, John Shaw Strange, James Gilchrist, and Charles Cooper, being put to the bar and arraigned upon this indictment, severally pleaded Not Guilty, with the exception of Wilson, and for their trial put themselves upon God and their Country. James Ings, however, in the first instance, to the question,—“How will you be tried?” having answered “By the laws of Reason,”—on the governor of Newgate remonstrating with him, he replied, “By God and my Country—the laws of Reason are the laws of my country.”

Wilson refused to answer to the name of James William Wilson, stating that his name was James Wilson, and tendered a plea of misnomer which was verified by his affidavit: the plea was directed by the Court to be recorded, and time was given to the attorney-general to reply.

Arthur Thistlewood, John Thomas Brunt, Richard Tidd, James William Wilson, John Harrison, and John Shaw Strange, were arraigned on the indictment for the murder of Richard Smithers. Wilson again pleaded in abatement his misnomer; the others pleaded not guilty.

Ings.—My lord, I wish to know how we are going to be tried, whether together or separately? My wish is to be tried separately; I know I can clear up the charges made against me.

Lord Chief Justice Abbott.—Probably you will have that opportunity; but this is not the proper time to make application: by and by it will be attended to.

Arthur Thistlewood, William Davidson, James Ings, Charles Cooper, Richard Tidd, John Shaw Strange, Richard Bradburn, James Wilson, and James Gilchrist, were arraigned; on the Coroner's inquisition, for the murder of Richard Smithers, and severally pleaded not guilty.

Arthur Thistlewood was arraigned on the indictment charging him with maliciously shooting at William Westcott, to which he pleaded not guilty.

James Ings was arraigned on the indictment charging him with maliciously shooting at William Charles Brooks, to which he pleaded not guilty.

Richard Tidd was arraigned on the indictment charging him with maliciously shooting at William Legg, to which he pleaded not guilty.

James William Wilson was arraigned on the indictment charging him with drawing the trigger of a loaded pistol, with intent to shoot John Muddock, to which he again pleaded in abatement his misnomer.*

At the request of the several prisoners the following gentlemen were assigned by the Court as their counsel:—For Arthur Thistlewood, William Davidson, James Ings, John Thomas Brunt, Richard Tidd, and James William Wilson, Mr. Curwood, and Mr. Adolphus. For John Harrison, Richard Bradburn, John Shaw Strange, James Gilchrist, and Charles Cooper, Mr. Walford, and Mr. Broderick.

Mr. Attorney General.—My lord, the gentlemen who are assigned as counsel for the prisoners, having intimated that it is the intention of the prisoners to challenge separately, I am under the necessity of desiring that they may be tried separately. I propose beginning with the trial of Arthur Thistlewood, on the indictment for high treason, on Monday morning.

* On Monday, April 24th, an indictment for high treason, found under this special commission, against James Wilson, to the same effect as the former indictment found against him by the name of James William Wilson, an indictment against him for the murder of Richard Smithers, and an indictment against him for drawing the trigger of a loaded pistol, with intent to shoot John Muddock, were delivered into court.

Lord Chief Justice Abbott.—Let the prisoner Thistlewood be informed, that his trial for high treason will commence on Monday morning, at nine o'clock.

The prisoner Thistlewood was informed accordingly, by the clerk of Arraigns.

SESSIONS HOUSE, OLD BAILEY.

MONDAY, APRIL 17, 1820.

Present.

The Right Hon. *Lord Chief Justice Abbott.*
The Right Hon. *Lord Chief Justice Dallas.*
The Right Hon. the *Lord Chief Baron* [Sir R. Richards].
The Hon. Mr. *Justice Richardson.*
The *Common Sergeant.*
And others his Majesty's Justices, &c.

Counsel for the Crown.

The *Attorney General* [Sir R. Gifford; afterwards successively C. J. C. B. and Master of the Rolls].
The *Solicitor General* [Sir J. S. Copley].
Mr. *Gurney.*
Mr. *Littledale* [afterwards one of the Justices of the Court of King's-bench].
Mr. *Reynolds.*
Mr. *Bolland.*

Solicitor.

George Maule, Esq. Solicitor for the affairs of his Majesty's Treasury.

Counsel for the Prisoner.

Mr. *Carwood.*
Mr. *Adolphus.*

Solicitor.

Mr. *James Harmer.*

The Court being opened, Arthur Thistlewood was set to the bar.

The Jurors returned by the Sheriff were called over, when it was ascertained that the following were not freeholders of the county of Middlesex to the amount of £10 a-year.

George Reid, esq.
James Hammon, plumber.
Charles Bowen, esq.
George Lavell, grocer.
Joseph Monyard, gentleman.
John Outhwaite, rope-maker.
Thomas Snock, shipwright.
Thomas Savage, watchmaker.
John Page, shipwright.
Robert Holding, esq.
Thomas Lambert, builder.
Samuel Smith, esq.
William Atlee, carpenter.
William Young, esq.
William Lawrence, baker.

Valentine Labrous, druggist.
Francis Search, feather-dresser.
Peter Fish, leather-cutter.
Thomas Barfoot, gentleman.
John Summers, esq.
John Brough, esq.
Thomas Littlewood, farmer.
Isaac Bryant, timber-merchant.
James Ariel, watchmaker.
James Whiskin, painter.
Joseph Warren, gentleman.
Job Leader, joiner.
William Anderson, gentleman.
William Meredith, watchspring-maker.
Edward Hargfall, gentleman.
Thomas Beach, market-gardener.
James Cooper, japanner.
William Fountain, silversmith.
Michael Bourne, milkman.
John Lee, stationer.
John Thomas Gwyn, coachmaker.
Thomas Hollings, lighterman.
John Cuppage, esq.
Henry Lawson, esq., and piano-fortemaker.
Charles Neat, teacher of music.
Thomas Gabriel, esq.
George Duplex, victualler.
James Huson, china-man.
John Lockett, gentleman and tavern-keeper.
John Harrington, dyer.
George Murry, gentleman.

The following Jurors were excused.

Edward Hughes, gentleman, on account of illness.
Edward Grant, cowkeeper, on account of illness.
William Stark, gentleman, not properly described in the panel.
Thomas Franton, cheesemonger, on account of deafness.
William Juson, rope-maker, on account of deafness.
Thomas Mitcheson, cooper, on account of deafness.
Henry Ramsey, boat-builder, on account of illness.
Robert Braine, gentleman, on account of deafness.
James Thompson, gentleman, on account of illness.
John Reynolds, watch-chain maker, on account of deafness.
Joseph Clements, market-gardener, on account of illness.
Alexander Ross, esq., on account of age and illness.
Thomas Austin, esq., on account of illness.
Thomas Phillips, jeweller, not properly described in the panel.
William Winsor, gentleman, not summoned, having removed.
Richard Norton, gentleman, on account of age.
Robert Cranch, gentleman, not properly described in the panel.
Thomas Garrett, gentleman, on account of age.
Samuel Winbush, horse-dealer, for the present,

not being prepared to depose whether he was a freeholder in his own right.

Robert Greaves, gentleman, on account of illness.

John Bell, esq. and builder, not properly described in the panel.

Charles Jeffery, gentleman, not properly described in the panel.

Patrick Bartlett, esq., not having received the summons in time.

Elijah Price, gentleman, on account of age.

Wilkes Booth, silversmith, not properly described in the panel.

Albert Gooch, watchmaker, not having been served with the summons, being on a journey.

William Barger, esq., on account of age and illness.

Thomas Hacker, timber-merchant, not properly described in the panel, his name being Hacker.

Thomas Hales, esq. and tea-dealer, on account of age and illness.

John Gould, gentleman and calico-printer, on account of illness.

Thomas Perry, farmer, on account of age and deafness.

John Frasier, gentleman, claimed his privilege as a practising attorney and solicitor which was allowed.

John Palmer, gentleman, on account of illness.

Charles Cock, tynmaker, not summoned, no such person being known.

Thomas Cheveley, ship-chandler, not summoned, having removed out of the county.

Thomas Bedel, esq., on account of illness.

Henry Friend, esq., on account of illness.

Peter Robertson, gentleman and builder, on account of illness.

John Moscrop, grocer, not properly described in the panel, his name being Moscrop.

Henry Kneet, market-gardener, on account of deafness.

Joseph Procter, gentleman, not having received the summons.

William Ferayth, esq., on account of illness.

John Breaks, springer and liner, on account of illness.

Stafford Price, gentleman and carrier, on account of illness in his family.

John Apple, drag-grinder, on account of illness.

Prisoner.—Will your lordship be pleased to allow me a seat?

Lord Chief Justice Abbott.—Considering the length of time the trial may be likely to occupy, the court will allow you that indulgence.

The List having been gone through, the Defaulters were called over.

Samuel Littlepage, baker, excused on account of illness.

John Westbrook, brickmaker, fined for non-attendance, but the fine afterwards remitted, on proof of illness.

John Smith, undertaker, fined for non-attendance, but the fine afterwards remitted on his appearance.

The Jurors who had answered to their names were again called over.

William Blason, gentleman, challenged by the Crown.

Alexander Barclay, gentleman and grocer sworn.

Thomas Lester, bookseller, challenged by the Crown.

Joseph Sheffield, esq. and ironmonger, challenged by the prisoner.

Thomas Goodchild, esq. sworn.

Joseph Haynes, bricklayer, challenged by the Crown.

Robert Stephenson, anchormith, challenged by the Crown.

Richard Blunt, gentleman, challenged by the prisoner.

Isaac Gunn, baker, challenged by the Crown.

William Churchill, gentleman and wine-merchant, challenged by the Crown.

Thomas Suffield Aldersey, esq. sworn.

Thomas Wilkinson, farmer, challenged by the prisoner.

Samuel Fish, tobacconist, challenged by the prisoner.

Edmond Collingridge, water-gilder, challenged by the Crown.

William Shore, farmer, challenged by the Crown.

James Herbert, carpenter, sworn.

John Shooter, gentleman.

Mr. Shuter. My name is incorrectly spelt, I spell it Shuter.

Lord Chief Justice Abbott.—The sound seems to me to be the same, that is no important variation as it appears to me.

Mr. Shuter was sworn.

Josiah Bartholomew, watch-maker, challenged by the prisoner.

John Jones, carpenter, challenged by the Crown.

Thomas Bristol, coachmaker, challenged by the prisoner.

Samuel Granger, lighterman, sworn.

George Dickenson, builder, sworn.

Thomas Parkinson, upholsterer, challenged by the prisoner.

Thomas Ashton, esq. and ship-chandler, challenged by the prisoner.

James Wilnot, market gardener, challenged by the Crown.

George Phillips, jeweller, challenged by the prisoner.

Thomas Bird, distiller, challenged by the prisoner.

William Johnson, baker, challenged by the Crown.

John Edward Shephard, gentleman, sworn.

Samuel Gould, calico printer, challenged by the Crown.

James Wadmore, esq., challenged by the prisoner.

Thomas Brown, oilman, challenged by the prisoner.

George Allen, brass founder, challenged by the prisoner.

William Reed, esq., challenged by the prisoner.

George Davis, cooper, challenged by the prisoner.

John Farnell, brewer, challenged by the prisoner.

Jonathan Passingham, farmer, challenged by the Crown.

Joseph Drake, draper, challenged by the prisoner.

John Fowler, iron-plate-worker, sworn.

Samuel Rhodes, esq., and cow-keeper, challenged by the prisoner.

William Gibbs Roberts, cooper, sworn.

Richard Smith, esq., challenged by the Crown.

Joseph Pendered, iron-plate-worker, challenged by the Crown.

Thomas Garrett, shipwright, challenged by the Crown.

Matthew Ashton, coachmaster, challenged by the prisoner.

Richard Hatchett, esq., and farmer, challenged by the prisoner.

John Dickenson, builder, challenged by the prisoner.

John Dobson, esq., sworn.

Thomas Dicks, silversmith, challenged by the Crown.

Thomas Wood, painter, challenged by the prisoner.

James Gates, joiner, challenged by the prisoner.

Robert Wells, farmer, challenged by the Crown.

William Fitby, brickmaker, excused, not properly described in the panel, his name being *Filby*.

Edward Brucebridge, watchmaker, challenged by the Crown.

John Jones, stockbroker, challenged by the Crown.

Thomas Partridge, farmer, challenged by the prisoner.

Henry Hillard, watch-gilder, not properly described in the panel, his name being *Hilliard*.

George Henn, ship-chandler, challenged by the Crown.

Thomas Harby, esq., and rope-maker, challenged by the prisoner.

William Jarrett, watch-engraver, challenged by the prisoner.

John Bunting, gentleman, and tailor, challenged by the Crown.

William Dawes, farmer, challenged by the Crown.

William Cooper, gentleman, sworn.

THE JURY.

Alexander Barclay,	George Dickenson,
Thomas Goodchild,	John Edw. Shephard,
T. Suffield Aldersey,	John Fowler,
James Herbert,	Wm. Gibbs Roberts,
John Shuter,	John Dobson,
Samuel Granger,	William Cooper.

Lord Chief Justice Abbott.—As there are several persons charged by this Indictment whose trials may come on successively, the Court thinks it necessary, for the furtherance of justice, strictly to prohibit the publication of the proceedings on this or any other trial, until all the trials shall be gone through. It is

highly necessary, for the purposes of justice, that the public mind, or the minds of those who may be to serve as jurors on trials hereafter, may not be influenced by the publication of any thing which takes place on the present trial. We hope all persons will observe this injunction.*

The Jury were charged with the prisoner in the usual form.

The Indictment was opened by *Mr. Bolland*.

Mr. Attorney General.—Gentlemen of the jury;—You are assembled to discharge one of the most important duties that can devolve upon a jury—to decide upon the guilt or innocence of a fellow subject charged with the crime of high treason; the highest offence known to the law. Upon such an occasion, I am satisfied it is unnecessary for me to bespeak your patient attention to the statement which it will be my duty to make to you; still less to point out the necessity of entering upon the investigation with unbiassed and unprejudiced minds—of disarding from your recollection every thing you have heard or read, relative to the charge preferred against the prisoner, of confining your attention exclusively to the evidence which will be adduced in support of that charge, and of forming your decision upon that evidence alone.

The charge is, as I have stated to you, one of the highest nature known to the law; other crimes, generally speaking, however heinous and enormous, terminate, except so far as example is concerned, with their perpetration; but high treason, not only in its inception, but still more if it be successful, draws after it consequences of the most dreadful kind, affecting not only individuals, but the community at large.

I shall not trouble you with any lengthened observations upon the law, as it applies to the crime imputed to the prisoner, because, if I mistake not greatly, that law is so undisputed, and the facts which will be proved to you will so clearly and satisfactorily establish the charge contained in the indictment, that it would be an idle parade in me to refer either to the authority of decisions, or to the opinions of our ablest commentators upon the subject. If the overt acts laid in this indictment, or a sufficient number of them, shall be satisfactorily proved, I will venture to affirm that no man who hears me will entertain the slightest doubt, that they will establish one or other of the counts of this indictment, and bring home to the prisoner at the bar, the high treason with which he stands charged.

The four counts in this indictment will all be proved to you by the same evidence; and

* See the proceedings on April 24th and 25th upon this subject, during the trial of John Thomas Brant; and the further proceedings on April 28th at the conclusion of the trials, under this Special Commission, *infra*.

the evidence which establishes one, will, I believe, completely support the others. The offences charged are compassing and imagining the deposition of the king from his throne; compassing and imagining the death of the king; conspiring to levy war, in order to compel the king to change his measures; and levying war against the king. It is hardly necessary for me to state, that in proof of these charges it is not essential that the plans of the parties accused should aim directly and immediately either at the deposition or at the life of his majesty, because if they were pointed against that form of government which now exists, if they were intended to bring about a change in the established system by means of force, they naturally and obviously, in the event of their being successful, tended to effect the removal of the king from his kingly dignity, or the destruction of his life. It will therefore be quite sufficient for me to apprise you, in the first instance, that the plans of the conspirators were of such a nature and description, that though, in their primary operations, they were directed against the government, as they will indisputably be proved to have been, and not immediately aimed at the destruction either of the authority or the life of his majesty, they would, in their consequences, inevitably lead to those results. And therefore, not to bewilder you in the inquiry upon which you are about to enter, I think it quite sufficient in the outset to state to you—that in which I believe I shall be confirmed by the highest authority the law knows when this case shall be summed up to you—that if the overt acts, that is, the facts stated in this indictment as indicating and evincing the traitorous intention of the conspirators, shall be proved, they will establish the charge laid in this indictment. It is unnecessary, therefore, to trouble you at present with any further discussion of the law applicable to the charge.

Important and anxious as the duty is which you are called upon to discharge, mine, I may say, is no less so. In my address to you, I do assure you my only purpose is, to make you acquainted with the nature of the charge against the accused, and the evidence by which that charge will be substantiated. It is neither my intention nor my wish to lead you to any conclusion which the evidence itself will not warrant; for, God knows, if the facts shall be proved, as I have every reason to believe they will be, they want no addition to bring the minds of any unprejudiced persons to the inevitable conclusion of guilt. My duty is to state the case to you fairly, as between the public and the unfortunate man at the bar, as I expect it will be proved, without exaggeration on the one side, or timid reserve on the other. If I should unconsciously err;—if, when the time arrives at which you are to determine upon the verdict you shall give, you shall think either that the statement I have laid before you has not been proved, or that the observations and inferences I have made

and drawn are not borne out by the proof, dismiss them from your minds, and confine your attention to the evidence alone. But if you shall be satisfied that the statement I shall have made is supported by the facts; if you believe that the observations introduced in the course of that statement fairly and naturally arise out of those facts, then you will, as honest men, give to them that weight which they deserve.

Having said thus much, I shall, without further preface, call your attention, as perspicuously and as briefly as I can, to the circumstances which will be given in evidence to substantiate the charge.

The prisoner at the bar, Arthur Thistlewood, must be already known to you by name; but, as I have already said, let nothing that you have known or heard of him before you came into this Court to discharge the solemn duty you are to perform, have the least effect upon the verdict you are to pronounce. The prisoner has, I fear, for some time conceived the wicked and nefarious purpose of attempting to overturn the government, as by law established in this kingdom: and it will appear to you, that all the other persons included in this indictment, and whose names will occur in the course of the investigation, were participators with him in this guilty design. Some of them, it is true, entered into the conspiracy at a later period than others, but all concurred in that act which was to have been the commencement of the tragical operations they had in contemplation. At present, however, I shall call your attention more particularly to two of the prisoners, James Inga, and John Thomas Brunt.

The prisoner resided, during the time of the transactions which I am about to relate to you, in Stanhope-street, Clare-market. Brunt was a shoemaker or boot-closer, living at a place which will be frequently mentioned in the course of this inquiry, Fox-court, Gray's-inn-lane; he inhabited two rooms on the second floor of a house in that court, in one of which his trade was carried on, and in the other he and his wife slept. His family consisted of his wife, a son, and an apprentice of the name of Hale.

I shall not carry you very far back in the narrative of these transactions; it will be sufficient for me, in this statement, to call your attention to circumstances which took place from the close of January, until the 23rd of the following month. It will appear to you, that long anterior to that period, the prisoner at the bar, the two persons I have mentioned, and several of the others whose names are included in this indictment, had consulted together, and devised plans for the purpose of overturning the government. They had held frequent meetings at a public house called the White Hart, in Brook's-market, and in a room behind that public house. At the latter end of the month of January, or the commencement of the month of February, they thought it

prudent to remove their meetings from those places, and that it would be better that they should be carried on in the house in which Brunt resided, in Fox-court; and, to avoid suspicion, they contrived that another room in that house, and upon the same floor upon which Brunt lived, should be taken for the prisoner Ings, who, I believe, was by trade a butcher. Brunt and Ings, it will be proved to you, hired that room for the avowed purpose of a lodging for the prisoner Ings, but for the secret and real object of holding meetings there, at which they might mature their plans, and prepare the means for carrying them into execution, it being a place of more immediate security and greater secrecy than they had previously been enabled to obtain.

Having prepared means for effectuating their plans, their meetings at the room in Brunt's house became more frequent and numerous. Gentlemen, I here regret that I have to state in an English court of justice the horrible plans which had entered into the minds of these conspirators, and the act with which they intended to commence the nefarious project they had in view. It was thought by Englishmen, that the assassination of all his majesty's ministers would be a proper commencement of the revolution which they wished to bring about; and you will find, that they frequently deliberated and consulted upon the means by which that most wicked design was to be accomplished. They entertained hopes that they should be enabled, at some meeting of his majesty's ministers, to perpetrate the bloody deed:—having effected that, they intended to set fire to various parts of this metropolis, to endeavour to obtain possession of the cannon at the artillery ground, and at the stable of the City Light Horse Volunteers, I believe in Gray's-inn-lane—to create as much confusion and dismay as they could by these various operations, and then to establish, what in their vain expectations they had imagined themselves capable of erecting, a provisional government, the seat of which was to be at the Mansion-house.

They had frequent deliberations upon these plans. You will recollect his late most excellent majesty died on the 29th of January. It was thought at one of the meetings, that the night of the king's funeral might be a proper time for them to commence the work of destruction. They had intimation that on that occasion the greater part of the troops quartered in the metropolis would be removed from it to Windsor, to attend the ceremony of his majesty's interment; and they imagined that would be an opportune period for putting their schemes in execution. However, they abandoned that intention; they found that their plans embraced more objects than they had men to effect; and upon that night, therefore, they did not attempt the purpose they had in view. But, brooding over their nefarious machinations, many of these men became extremely impatient at the delay which was from time to time interposed be-

tween the present day and that which they thought would be the completion of their hopes, and you will find, that at a meeting which they held at Brunt's, on Saturday, the 19th of February, the impatience became so great, on the part of many of them, that they then determined to wait no longer; but that if no opportunity in the mean time should occur, of their being able to accomplish the assassination of his majesty's ministers, by finding them all assembled at the same house, at all events on the following Wednesday, the 23rd, some blow should be struck, and that the revolution which they had in contemplation, should actually have its commencement.

Having thus determined, they appointed a meeting on the next day, the Sunday, at Brunt's house, for the purpose of forming a committee, upon whom should devolve the organisation of the plan of operations for the ensuing Wednesday. At that meeting, and indeed at all the meetings, you will find that the prisoner at the bar was the leader upon whom they mainly relied for the success of their enterprise. You will find that he was generally the person who addressed them, who suggested the course of their proceedings, and in whose counsel and advice they placed the most implicit confidence. It was the prisoner, Thistlewood, who, on the 19th of February, proposed that which I have stated to you; he said, that as it did not appear from any intelligence they could collect, that ministers were likely soon to be together at a cabinet dinner, they should immediately ascertain the strength of their respective parties, and that having ascertained it, those parties should be divided into different bodies, upon some of whom should devolve the horrible task of destroying as many of his majesty's ministers as came within their reach; upon others, the duty of setting fire to various parts of the metropolis, and that to the rest should be assigned the execution of other parts of the plot, which were then detailed by the prisoner Thistlewood. This plan was at that meeting seconded by Brunt; and it was agreed, that on the following day, the Sunday, a meeting should take place at Brunt's room, in order to appoint a committee to complete the final arrangement of the operations of the following Wednesday.

Accordingly, on that Sunday a meeting took place at Brunt's. It was attended by the prisoner Thistlewood, Ings, Harrison, Wilson, and others of the conspirators. With all their names I do not at this moment trouble you, because your attention should be confined, at present, to the charge against the prisoner upon trial; at the same time I must observe, that if in the course of the investigation, we shall connect all the persons accused in one common plot, and one common design, the acts and declarations of all of them will become most important. They will each be answerable for the acts and declarations of the others, made and done in furtherance of their common object. The plan was again detailed by Thistlewood, was again approved by the persons pre-

sent (their number being fourteen or fifteen), and it was resolved that no activity should be wanting in the mean time, in making the preparations necessary to enable them to effect their atrocious designs.

Upon that occasion it was agreed that they should meet again on the following Monday; and you will find they did accordingly meet at Brunt's. The same plan was canvassed—no objection was made to it—and they then separated for the purposes of communicating it to their followers, in the different parts of the town, and of collecting as many persons as they should be enabled to do, for meeting on the following Wednesday.

On the morning of Tuesday, the 22nd of February, a meeting took place at Brunt's, and, upon that occasion, one of the conspirators communicated to those who were present, that he had discovered by a newspaper that a cabinet dinner was to be had on the following day, Wednesday, at the house of lord Harrowby, in Grosvenor-square. You will be shocked when you hear the evidence of the exultation with which this intelligence was received. Brunt, with an impiety at which every well regulated mind must revolt, exclaimed that till then he had disbelieved in the existence of a God, but that now he was satisfied that the Almighty was favouring their designs, and that this meeting was appointed on the following day to enable them at one blow to effectuate that purpose, which had been levelled against each of his majesty's ministers; and that they might be enabled, by the means they had procured, at once to destroy every member of the cabinet who should be present upon that occasion. The exultation was not confined to Brunt alone; you will find that Ings, and the other persons present, equally rejoiced in the contemplation of the speedy success of their infamous designs, exclaiming that on the following night they should attain that which had been so long the object of their desire, and for which they had been preparing with such unremitting anxiety. A newspaper was then sent for in order to see whether the intelligence was true: on its being brought, it was discovered to be so, and then they immediately resolved that instead of the plan which had been previously arranged, namely, the endeavouring to assassinate some of his majesty's ministers at their respective residences, or wherever they might be found, the house of lord Harrowby should be the object of attack; and that in the evening, at nine o'clock, after the guests were assembled, and when they were seated in security at table, the house should be entered by a chosen party of the conspirators, and the ministers should be destroyed by the means I shall presently describe to you.

Upon this intelligence their activity was redoubled; they met again in the evening; their different partizans were requested at once to collect together all the fire-arms they had obtained, the ammunition they had purchased, and the different instruments of mischief, which

you will find they had prepared for the occasion; every thing was to be put in a state of preparation against the following evening.

I should have stated to you, gentlemen, before I arrived at this part of the narrative, that a person of the name of Tidd, who is included in the indictment, and who lived, I believe, at a place called Hole-in-the-Wall Passage, near Brook's-market, had, early in the plot, become one of these conspirators, and had embarked in all their plans. His house had been made a dépôt for some of their arms and ammunition. As their meetings were at Brunt's, they had a suspicion that they might be watched and overlooked, and they considered it unsafe that his house should be the sole place of deposit. Tidd's, therefore, had for some time been appointed to be another receptacle for the powder, ball, ammunition, and other instruments of destruction, which they had prepared, and which will be produced to you in the course of the trial.

As Brunt's house was at some considerable distance from Grosvenor-square, where their operations were to commence, they thought it better to procure some place of rendezvous nearer to the residence of lord Harrowby; and you will find, therefore (though it was not communicated at that moment to the different parties who were engaged in the transaction), that the spot selected was a small obscure street called Cato-street, which runs into John street, in the Edgware-Road. In this street a stable was procured by Harrison, one of the conspirators, for the purpose of their meeting on the following evening, preparatory to their going to the house of lord Harrowby, in Grosvenor-square.

It providentially happened in this conspiracy, as will generally occur in plots of a similar nature, that some of the parties, previous to its execution, began to feel compunctious visitings of nature, and startled at the crimes they were about to commit; and you will find that upon the Tuesday (the day on which the intelligence was received by them that there would, on the following day, be a dinner at lord Harrowby's) a person of the name of Hiden, who will be examined as a witness—a person to whom this plan had been divulged, and who the conspirators had hoped would be a participator in the execution of their designs—felt a visiting of conscience which impelled him to communicate to lord Harrowby himself the scheme that was in agitation. This person watched an opportunity of lord Harrowby's going from his house into the park, and there made his lordship acquainted with the mischief that was intended.

It will also appear to you, that on Tuesday some little alarm had been excited in the mind of one of the parties (a man of the name of Adams) that their plans were suspected, and that they therefore incurred some hazard in meeting. On that day, at Brunt's house, Adams informed Thistlewood and the others, that a communication had been made to him

by the landlord of the White Hart, intimating that their meetings at that public-house had, he thought, been observed by some of the police officers, and Adams expressed his apprehension that their schemes were discovered, or were likely to be so. This excited in the minds of some of the persons assembled the greatest agitation; they stated that they were astonished that Adams should venture, in the presence of men, some of whom were comparatively strangers, to hint that there was a possibility that their plans could be detected. Brunt, in order to satisfy them whether there was any ground for the suspicion which had been entertained by Adams, proposed that certain of the party should be appointed to watch lord Harrowby's house on that evening, and early on the following morning, to see whether any persons were introduced to resist the intended attack, and to ascertain whether their intentions were known. You will find that they carried the proposal of Brunt into effect, by sending two of their party, one of whom was Davidson, a man of colour (who will be very conspicuous as an active partisan throughout the whole of this transaction), on that evening, about six o'clock, to watch lord Harrowby's house. These watchmen were to be relieved about eight or nine by two others of the party, who were to remain three hours at their post, and their places were then to be supplied by two others, who were to continue there during the night. It will be proved that these watches were actually set on that night, and that the men performing the duty were seen by different persons in Grosvenor-square. Finding, as was the case, that there appeared to be no alarm—that no police officers or troops were admitted into lord Harrowby's house, or stationed in the neighbourhood—the conspirators felt quite satisfied that the fears expressed by Adams were groundless, and that there was no reason to suspect a discovery.

On Wednesday, great preparations were made by them; arms were brought of various descriptions, guns, pistols, sabres, swords, and engines which, when you see them, you will perceive to be calculated for the most deadly purposes. These engines they had themselves prepared, and their most appropriate appellation is hand-grenades. They are formed thus:—a quantity of powder, from three to four ounces, is enclosed in a tin case, to which is attached a tube for the insertion of a fuse: round this case is tied a quantity of tow, and on the outside of that tow are fastened, as tight as they can be, sharp-pointed pieces of iron of various descriptions. Thus closely confined the powder would explode with considerable force, and the pieces of iron would be scattered around in every direction. It was stated at their meetings, without any disguise, that the purpose to which these instruments were to be applied was this:—when the attacking party entered the room where his majesty's ministers should be assembled, the fuses were to be lighted, and the grenades

thrown amongst them, inflicting by their explosion, wounds and death upon the persons in that room. Of these they had prepared a great number, I know not how many. They had also provided themselves with preparations which they chose inhumanly to call illumination balls; these were made for the purpose of setting fire to any buildings which it should be their intention and object on that night to burn. They had also collected a large quantity of ball cartridges, the amount of which will probably surprise you, but it will appear, that they had between eleven and twelve hundred rounds; they had also cartridges for loading cannon, which they had made of flannel bags in each of which a pound of powder was contained. They had lastly got together a great number of pikes and pike handles, for the purpose of arming those of their friends and associates who might have no other weapons. These preparations had been, as you may naturally suppose, the work of considerable time; they were ready upon the 23rd of February, for the purpose for which they were intended.

On the morning of the 23rd of February, the conspirators assembled at Brunt's house, where they were engaged in completing the hand-grenades, putting flints into their pistols, loading their arms, and making every preparation for the meditated attack. I have already told you, that for the purpose of their meeting, and for the convenience of having some place near to lord Harrowby's house, a stable had been procured by one of these conspirators, in Cato-street. I know not whether curiosity may have led any of you, as it has led a great number of the public, to visit that spot, but if it has not, I will endeavour to describe it to you, and I think you will agree with me, that a more appropriate situation for the purpose they contemplated, could hardly have been selected. It is an obscure street, having a very narrow access at each end; it is accessible by a horse or carriage at one end only. The entrance at one extremity is under an archway, and at the other there are posts, to prevent the passage of any but foot passengers. The east end leads into John-street, the west into Queen-street; both which streets run parallel to each other into the Edgware-road. This stable is the first building on the right hand side as you enter Cato-street, from John-street and it is nearly opposite to a small public-house called the Horse and Groom; it belongs to General Watson, who is abroad, and had been occupied by a person of the name of Firth, by whom it was let to Harrison. It consists below stairs of three stalls, and a small place adjoining, for the reception of a cart; nearly opposite the door is a step ladder, leading up into a loft, by the side of which loft are two small rooms immediately over the cart-house. It will be proved to you, that previous to the meeting which was to take place between seven and eight o'clock on that evening, preparations had been made by Harrison, and by

several of the persons who will be named to you, for the reception, at this stable, of those who were coming. A piece of canvas had been nailed up against the window of the loft, to prevent persons observing from the opposite side of the street, what might be passing within; and it was noticed by several of the neighbours, that this place was visited by a great number of persons during the afternoon, who were carrying in various things on their backs, the nature of which those persons could not discover, but which I think you will have no doubt, after the discovery made, were the arms and other instruments of mischief, which were found collected there on the evening when the prisoners were taken.

Harrison, who was known to one of the witnesses who will be called, was observed in the afternoon going to this stable, and upon being asked what was his business there, and how it was that he had possession of the stable, he said he had taken it from Firth, and that he was cleaning it up. About six o'clock Davidson, the man of colour, was also observed waiting close to this stable, and going into it, with something upon his back, or under his arm, and a number of candles in his hand, and you will find that he applied at a house adjoining, about six o'clock, to light one of the candles, which he afterwards carried into the stable.

One party was to meet that evening at Brunt's, in order to proceed from thence to the place of rendezvous. Tidd, whose name I have mentioned to you already, was to bring up another party, and Bradburn was to accompany a third. They had not communicated to all their associates the precise spot where the meeting was to be held: some of them were directed to the Horse and Groom, and others were told to repair to the Edgeware Road, near John-street, where persons would be in waiting to point out to them the place of assembling. Between seven and eight o'clock, Brunt and some others from his house took their departure for Cato-street, with arms which they had provided concealed under their coats. On their arrival, they found Thistlewood, Harrison, Ings, Wilson, and some others. The party proceeded to the loft; in it were collected arms of different descriptions, blunderbusses, pistols, swords, pikes, hand-grenades, and a considerable quantity of staves, with ferules fitted to one end, in which a hole was drilled to admit the screw of a pike. They are rough ash sticks, of a considerable length and size, and will be produced to you, together with the other weapons seized on that memorable night.

At first the party in Cato-street consisted of fourteen or fifteen persons only, and some little alarm and suspicion were evidently raised in the minds of Thistlewood and some of the others, at Tidd's not making his appearance at the appointed time, and a remark being made by one of the persons present, that their numbers were not so large as they were ex-

pected to be, it was stated by Thistlewood and others, that more would by and by assemble, and that detached parties, who were not to accompany them to lord Harrowby's, were gone on different expeditions, about the metropolis. A short time afterwards, however, Tidd made his appearance with a man of the name of Monument, a person who had been only recently induced to participate in this crime; he had before been introduced to Thistlewood, and had a communication with him generally on the state of political affairs, with a view to the change the prisoners at the bar wished to effect, but had not till that evening been invited by Brunt to accompany them to Cato-street, and probably was not aware of their exact and precise plans, until he arrived at the spot; although no doubt he must have been aware, that the conspiracy had for its object some great political change. He arrived with Tidd about seven o'clock, and the party at that time consisted, I believe, of four or five and twenty persons, two of whom were appointed to remain below, as sentries, in order to prevent interruption from any persons who might not be connected with them. Those two persons (who, I believe, were Davidson and Ings) were occasionally in the loft when their plan was talked of, and it was finally arranged that they were to proceed to the house of lord Harrowby about eight o'clock. Some apprehension, as I have already told you, having prevailed in the party, that their strength was hardly adequate to the execution of their design, Thistlewood and Ings said, that the opportunity must not be lost; that there were enough of them to effect the destruction of the ministers; that other parties would set fire to various parts of the metropolis; and that when the decisive blow was struck, and the town was in flames, hundreds of the people would join them, and their body would become too formidable for opposition. This statement allayed their fears; and between seven and eight o'clock they proceeded to a selection of those who should compose the party to enter the house of lord Harrowby, and destroy the ministers. The scheme had been already settled, Thistlewood was to knock at the door, under pretence of having a note to deliver to lord Harrowby, and having obtained access to the hall, they were to secure the servants, whom they expected to find unarmed, and whom therefore they should have no difficulty in compelling to show them the room where the ministers were at dinner. The party was then to make its way to that room, and without remorse to destroy indiscriminately every one of his majesty's ministers who should be there assembled.

I have stated to you already, the exultation and the impiety displayed by Brunt on one occasion, and I cannot conceal from you a fact, as it affects another of the persons charged, I mean Ings. This man had been a butcher, and he had armed himself, on this occasion, not only with a blunderbuss and a sword, but

with a large butcher's knife, which will be exhibited to you; and for the purpose of enabling himself to use it with more effect, he had twisted round the handle a quantity of wax end, in order that when he grasped it, it should not slip from his hand, and he then stated in the most gross and horrible language, that with that knife he would murder and mutilate some of the honourable persons assembled at the house of lord Harrowby. This barbarous idea of mutilation was, I am afraid, borrowed from scenes which some years ago disgraced a neighbouring country; and was formed under the expectation that the exhibition of the heads of some of his majesty's ministers, after their murder had been effected, might inflame the populace, and thus enable the conspirators to succeed in their nefarious purposes. That very knife was found and taken from the person of Ings, upon the night of the 23rd of February, in the stable in Cato-street. I mention that fact as corroborating, if corroboration shall be needed, the circumstances which I have detailed to you, and which will be narrated by the witnesses. Happily for this country, that Providence which had been so impiously profaned by Brunt on the occasion, interposed to prevent the accomplishment of the diabolical scheme. From the communication which had been made to lord Harrowby, by Hiden, and from other information, the government was satisfied that these persons intended to meet in Cato-street. Means were taken to secure the parties after they had there assembled, and before they should proceed to execute the mischief they designed.

In order to prevent any suspicion, it was wisely determined by lord Harrowby, and those with whom he consulted, that the dinner which had been provided, and was intended for his majesty's ministers, should be prepared. It was evident, that if any alteration had taken place in the time or place of the entertainment, and such an alteration had been by any means made known to, or had been suspected by the prisoners, their course of proceeding would have been changed, and their meeting would have been postponed to a future and more convenient opportunity.

Precautions had been taken to prevent the accomplishment of this plan; a number of Bow-street officers, and of the patrol, had been directed to go to Cato-street, to watch the movements of those who might assemble there; and at a convenient season, before they should take their departure from thence, to secure those who were assembled. A party also of the Guards, who were stationed at Portman-street barracks, were directed to attend in John-street, to aid the civil power; and you will find, that at the very moment when they were selecting those of the party who should be the foremost in the execution of their daring and horrible enterprise: at the very time when Thistlewood in the loft was separating from the rest those to whom was to

be assigned this assassination and murder, the officers entered the stable. Upon their entrance they discovered two persons; one will be proved to be Davidson, he was remarkable from his colour, as he is nearly a black; he had cross belts over his shoulders, and a belt about his loins; in one of the former was suspended a sword; he had a gun upon his shoulder, and pistols in the belt that was round his waist: he was stationed just within the door. The other man, who will be clearly identified to be Ings, was posted at the bottom of the ladder. He was armed with the knife I have mentioned, a gun, and a cutlass.

The officers, with a resolution hardly credible, when you consider the desperation and the determination of the conspirators who were assembled above, ascended the ladder. The first who went up was Ruthven, he was followed by Ellis, after whom came an officer whose name undoubtedly you must have heard mentioned, the unfortunate Smithers, who met his death that night by the hand of the prisoner at the bar. Upon Ruthven's ascending the ladder, one of the men below called out to those above, as a signal for them to be upon their guard; and when Ruthven had gained the loft, Thistlewood, who was at a little distance from the landing place, and whom the officer distinctly saw (for there were lights in the loft), receded a few paces; the officers announced who they were, and demanded the surrender of the persons in the loft. Ruthven, as I told you, was followed by Ellis, who drew up close by him; Smithers proceeded forward in a direction to seize Thistlewood, the prisoner, who instantly retreated into one of those small rooms which I have described, and the moment he saw Smithers approaching, he drew back his hand, which held a sword, and immediately thrust it at the unfortunate man; he received the wound near the heart, and had only time to exclaim, "Oh God, I am killed!" before he sunk into the arms of Ellis and died. Ellis seeing the blow given by Thistlewood, immediately discharged a pistol at him, which missed its aim; a great confusion ensued; the lights were struck out; the officers were forced down the ladder; many of the party followed; Thistlewood amongst the rest came down, and not satisfied with the blood of one person whom he had already killed, he shot at one of the officers, as he descended the ladder, a man of the name of Westcott; he then proceeded through the stable with his sword in his hand, cutting at every one who attempted to oppose him; and the soldiers at that moment not having arrived at the spot, Thistlewood ran into John-street, and so towards the Edgware Road, and was not at that time taken. The other persons were equally desperate in the resistance they made; conscious of their purpose, they waited not to know on what charge they were to be apprehended. You will find, that Ings, Davidson, Tidd, and Wilson, all made a desperate resistance, and each of them, I believe, fired at the officers and soldiers who

attempted to arrest them; but their resistance was ineffectual, and they were fortunately secured. Davidson, Inga, Tidd, Wilson, Bradburn, Strange, Gilchrist, and Cooper, were taken either in the street, or in the loft. The only persons who then effected their escape, out of the eleven comprised in the indictment, were Brunt, Harrison, and Thistlewood. Several others, assembled upon that occasion, whose names are not known, also made their escape.

The officers not only secured the prisoners, but possessed themselves also of the various articles of arms and ammunition that were in the stable: they will be produced to you in the course of the trial.

Brunt went home, and you will find by his apprentice Hale, that he arrived there between nine and ten o'clock; the boots which he wore were covered with dirt. He was immediately followed by another man, whose name the boy does not know, but who, from the conversation with Brunt, was evidently one of the party at Cato-street. When he appeared, Brunt was rejoiced to see him; and from what passed, Hale collected that they had been together, and had both escaped; but that the stranger had been seriously hurt by blows he had received. Brunt fancied that having escaped, his person had not been discovered, and that no one would disclose the transaction. He slept at home that night, but on the following morning he rose early, called the apprentice boy, asked him if he knew some street in the Borough which he named, and stated that he wanted him to take to that street two baskets, which were in the room that had been let to the prisoner Inga. Those baskets were tied up by Brunt, and one of them was wrapped in an apron belonging to his wife, and which had been nailed up against the window of the room occupied by Inga, for the purpose of preventing observation. He had hardly effected this operation, and gone into his own room, when the officers who had received information that he was one of the party in Cato-street, entered the house, apprehended him, and at the same time seized the two baskets. It was most important to Brunt to have conveyed away those proofs of his guilt, for in those baskets were contained grenades, fire balls, and other preparations which had been made for accomplishing their design. He affected ignorance of the contents of the baskets; but you will find, from evidence that cannot be contradicted, that he had just packed them, to be sent into the Borough.

Thistlewood did not return to his house in Stanhope-street; he secreted himself in a house in White-street, Finsbury-square, belonging to a man of the name of Harris. Intimation, however, was received by some of the police that he was there concealed, and between ten and eleven o'clock on the Thursday morning, a party of officers, headed by Bishop, went for the purpose of securing him. They first searched the rooms up stairs, and not finding him there,

they descended to the ground-floor, and observing a door, which on trying it was found to be locked, leading into a room opposite the sitting room of the people of the house, Bishop demanded the key, and knowing the desperation and determination of the prisoner at the bar, he opened the door as softly as he could. On entering, he perceived that the window-shutters were closed; but there were holes in them to admit the light, by which he discovered the prisoner Thistlewood in bed. Thistlewood raised his head: Bishop, immediately recognized him, and threw himself on the bed to secure him; and Thistlewood, perceiving that resistance was unavailing, surrendered.

By these means the prisoner at the bar was taken into custody, and here the narrative of the facts would naturally have closed, but there is one important circumstance which I have omitted to mention, and which I must now bring to your notice. On the 28th of February, when they met at Brunt's room, previous to going to Cato-street, after their plans were discussed, their objects avowed, and they had resolved upon the assassination of his majesty's ministers (thinking that by that event, such dismay and confusion would be every where excited, that they should the more readily attain the ulterior objects they had in view) they held some further consultation as to what should be done after that blow had been struck. I have already told you, that part of their plan was, to set fire to certain buildings; and amongst others the King-street barracks, near Portman-square, were fixed upon for conflagration. Harrison, one of the conspirators (who had been, I am sorry to state to you, in his majesty's service), was acquainted with the situation of that building; and had stated that he could easily, by means of a window which opened at the back part of the premises, and communicated with a loft in which straw and hay were kept, throw in one of the fire-balls, which would create great confusion among the troops who were quartered there, and would prevent their getting themselves and their horses accoutred, when they were called upon to act.

Upon that occasion Thistlewood sat down to write a proclamation addressed to the inhabitants at large of this metropolis. For the purpose of writing this proclamation, some sheets of cartridge paper were wanted, and the boy Hale was sent out to obtain it; on his return, Thistlewood wrote in large letters the following words, or to the following effect:—"Your tyrants are destroyed, the friends of liberty are called on to come forward, as the provisional government is now sitting." If any doubt could be entertained of the ulterior designs of these conspirators, and that they were not confined to the assassination of his majesty's ministers, this proclamation would put the matter out of all doubt: he wrote two or three copies of it—he read it aloud to the parties assembled, and told them, it was to be stuck up near the houses on fire; that the peo-

ple might the more readily see it. He afterwards endeavoured to compose another address to be issued to the soldiers. It contained a call upon them to join the friends of liberty, and a promise of their immediate discharge, with full pay for life, and a donation of 20*l.* to take them to their respective homes. Whether or not that address was absolutely completed may be doubtful on the evidence, but the proclamation, of which I gave you the substance, was read by Thistlewood. The written proclamations were taken away by the prisoner, but there will be no doubt whatever of the contents of them; they will be proved to you by a person who heard them most distinctly.

I was stating, before I mentioned this important circumstance, that I had nearly closed the narrative of the facts which will be proved against the prisoner at the bar, and I ask you, if these facts are proved, whether any one of you, calmly and dispassionately considering these facts, can entertain a doubt of the guilt of the prisoner at the bar. What answer can be given to them, I am at a loss to conjecture. Will any be given, or attempted? If no answer be given by evidence, what can be said by way of observation? Will it be urged to you, that this plan was so wild in its nature, so impracticable in its execution, that its existence cannot be credited in a court of justice? Is that argument to be used upon this occasion? You and I, judging of others by ourselves, are very inadequate judges of the belief to be entertained of the existence of a plan of this sort. Men, with heated passions, and a determined purpose, conceive schemes which in themselves may be impracticable, or not likely to be brought to a successful result; but as the inventors brood over them—as they consider their machinations from day to day—they work themselves up into a belief at last, that their means are more powerful than they really are; they diminish the difficulties which are interposed between the conception of their plan and its completion; they fancy that there are other persons as wicked as themselves, who though they cannot be prevailed upon, in the first instance, to embark in their nefarious schemes, will, when a blow is struck—when something is done to excite their feelings and their passions, immediately join the standard of insurrection. You and I, gentlemen, reasoning calmly, may, as I have said, be very inadequate judges of the workings of the minds of men of this description; but facts will be proved which admit of no solution, which allow of no explanation, consistent with the innocence of the prisoner and his associates.

Your judgment is not to be formed upon an inquiry whether the scheme of these men was practicable, or whether it could ever have entered into rational minds. Those are not the questions for your determination. If a plan has been formed for the purposes charged by this indictment—however wild and however visionary it may appear to you—if you are convinced that such a plan did enter into the

minds of the prisoners, and that they took one single step towards its accomplishment, then, and I state it without the hazard of contradiction, that conviction will justify a verdict of guilty.

I have no doubt it will be stated to you, that many of the facts in the case are proved (for they can only be so proved) by persons who were participators in all the criminality of the transaction: and it will be urged to you, with great force, that accomplices are not to be believed unless they are confirmed by other witnesses. In plots of this nature, contrived in secret, and which can only be effected by concealment (I mean in their original concoction and formation), if the testimony of an accomplice were not to be received, perfect immunity would at once be held out to the inventors of the blackest schemes. Fortunately, it is neither the law of England, nor can it be the law of any country that has reason for its guide, that an accomplice in a crime cannot be a witness to prove its existence. But as in this case I am far from being anxious to press the proof one iota further than it ought, in justice to the community, to be carried, I freely admit that the testimony of an accomplice should be received by you with the greatest jealousy and caution; you should watch the manner in which he gives his testimony; you should weigh the credibility of his story; but above all you should see whether he be or be not confirmed in the material parts of that story by other and uncontaminated evidence; not in every particular, because if it were possible so to confirm him, then you need not his testimony at all; the witness by whom he could be so supported would render the testimony of the accomplice unnecessary. If his account is corroborated to such an extent as to render his whole testimony credible; if you find him speaking truth in those parts capable of, and which shall have received, confirmation, you have a right, you are bound to conclude that the rest of his narrative is true. There are always in these transactions some things which cannot be proved except by the participators in guilt. No men contriving such a plan as this would ever venture to discuss it in the presence of others whom they did not believe to be fully prepared to go all lengths with them for the completion of it; their secret deliberations, known only to themselves and to God, cannot be divulged unless the testimony of their accomplices be admitted. I say, therefore, to declare that an accomplice is not a credible witness, that he is one upon whose testimony a jury cannot act, would be at once to establish the principle that the darker the design, the more nefarious the purpose, the greater shall be the immunity of the offenders, the less their liability to detection. The more heinous the crime, the more secret it will naturally be kept; and it will be utterly impossible to bring to justice those who contrive and execute schemes of villainy, unless the evidence of others who have been to a certain ex-

tant participants in the guilt, can be resorted to, and made available.

Not only is it the law of England, but it is the daily practice of its courts, to admit the testimony of accomplices. In trials for murder, how often do you find not only that an accomplice is received, but that reward and pardon have been held out to him to induce him to become a witness against the accused? Happily for the ends of justice in this case, no question of doubtful confirmation will occur; a man of the name of Adams will be called, a guilty accomplice with the prisoners, meeting them and consulting with them daily, from the latter end of the month of January till they assembled in Cato-street. He will prove what passed when he was present, and the acts to which he was a party. The account he will give you of the treasonable conspiracy will, in a variety of its leading circumstances, be so confirmed both by the oral testimony of unimpeachable witnesses, and the production of the arms found upon the persons and in the houses of the conspirators, and in the loft in Cato-street, as to leave, I fear, upon your minds, no doubt whatever of the guilt of the unhappy man at the bar.

Another witness I shall present to you is not so implicated; I mean the man who first communicated the transaction to lord Harrowby. To a certain extent he had been made acquainted with the schemes of the prisoners; and had listened to the detail of them, with apparent approbation; but without at all engaging in them, he immediately disclosed what had been imparted to him.

We cannot always account for the operations of the human mind. Some men, if they had once embarked in such a plot, might mistakingly consider it an imputation upon their courage to recede; others, when the ultimate objects of the conspirators were developed, might, from disapprobation of them, or from timidity, withdraw themselves, and still be so unmindful of their duty to society, and of their allegiance to the king, as not to make known the mischiefs that were in contemplation; others, when they came to reflect upon the matter, might feel that they were bound to make it public—that they were called upon by the common feelings of humanity to avert from the devoted victims of this bloody scheme the destruction that awaited them. Hiden is of the last description, and is no credit to be paid to this man? is his testimony such as you are to discredit; Weigh it in the scales of caution, scrutinize it anxiously, but permit me to observe that I see nothing in the conduct of Hiden on this occasion to impeach his veracity.

A person will be called to you, of the name of Dwyer, who was supposed undoubtedly by Thistlewood and some of the others, to be worthy of their confidence, and who was expected to assist them on the evening of the 23rd. Having had a previous acquaintance with Davidson, Dwyer was applied to on the morning of that memorable day; they com-

municated to him their intention of meeting in the evening at Cato-street, for the horrible purpose of attacking his majesty's ministers, at lord Harrowby's. He almost instantly communicated it to an officer in the army, with a desire that he would make his majesty's ministers acquainted with it; and that was accordingly done.

But this is not the whole of the case on the part of the prosecution—it will not depend upon the testimony of Adams, Hiden, and Dwyer only, for there are facts in this case requiring, on the part of the prisoner, such an explanation as I am afraid it will be impossible for him to give, but which, unless he does give will put the seal to his guilt. What was the purpose for which these persons were assembled in Cato-street on that night? Men with no common bond of union—not related to each other—not connected with each other, except in the nefarious schemes they had in contemplation—are found assembled in a stable, in an obscure street, with a large collection of arms of the description I have given you. In addition to those instruments of mischief which were seized by the officers and soldiers in Cato-street, there were found in the houses of two of these persons, Tidd and Brunt, other materials and implements of death. For what purpose, I ask, if their object was confined to the murder of his majesty's ministers, were eleven or twelve hundred rounds of cartridges procured? Why were quantities of grenades and fire-balls prepared? For other objects and other purposes than the attack in Grosvenor-square; for the objects described, and the purposes charged in this indictment.

I cannot anticipate that the learned counsel to whom the prisoner has confided his defence, will put it upon this issue. I am convinced it will not be contended that this plan was to begin and end in the assassination of his majesty's ministers. His majesty's ministers! had they, as individuals, offended any of these prisoners?—Had they, as individuals, excited in the minds of these men any motives for revenge? No, gentlemen, the blow was not aimed at them as individuals; it was directed against them for the official character which they filled. It was not against the earl of Harrowby that the dagger was to be raised, but against the president of the council. It was not the earl of Liverpool who was marked by the conspirators for destruction—a nobleman whose person probably they might not know, and who could never have offended them in thought, word, or action; it was the first lord of the treasury they intended for their victim. Can you doubt that when they meditated the destruction of his majesty's ministers, they contemplated it as an act which was to be the commencement of that wild and visionary revolution they had in view; and with the intention of establishing that provisional government alluded to in the proclamation the prisoner Thistlewood had drawn up? Can any man, much less persons

in your station and rank of society, imagine a motive for this conspiracy against his majesty's ministers, if the subversion of the government was not the ulterior object of the conspirators?

With these facts before you, I shall not fatigue you by the detail of many minute circumstances in which the principal witnesses will be strongly confirmed. I will not allude to the evidence which will come from uncontaminated sources, particularly from the apprentice of Brunt, who was no participator in the guilt of his master. If the case rested on the evidence of those alone who may be termed, by the prisoner's counsel, participators in the crime, you will have facts proved by them which must lead you to the unavoidable conclusion that the charge in the indictment is substantiated. What was the conduct of the prisoners when they were surprised in the loft? I assure you, I am most desirous that that conduct should not be considered by you any further than as it tends to the conclusion of the guilt or innocence of the prisoners on the charge you are sworn to decide. The officers endeavoured to secure them. If they were there for an innocent purpose, why did not they surrender when the officers called upon them to do so? What was their conduct?—the most determined, the most ferocious; one of the officers is inhumanly killed, and others are attacked and fired at. Do not misunderstand me; as far as the death of the unfortunate Smithers is concerned, you are not trying the prisoner at the bar for that act; but you are bound to take all their acts in the stable into your consideration, they cannot be dismissed from it. It is a fact in the case, that they resisted the civil power by all the means they had, to the utmost extremity. The prisoner at the bar effects his escape, flies from his dwelling-house and secretes himself in a different part of the town, and is there found. With all these facts before you, if they shall be proved, let me ask you, as reasonable men, what conclusion can you draw from them favourable to the prisoner?

The issue of this case is undoubtedly of the very deepest importance to the unfortunate man who stands before you; it involves not only his character, but his life. On the other hand, reflect upon the importance of it to the community at large.—If this plot was contrived, if this man invented or adopted it, and the means were used which I have described to you to carry it into execution, can you hesitate to do that act of justice to your country which such evidence imperiously calls upon you to perform?

When the period for making up your minds upon this momentous question arrives, you will weigh the evidence calmly and dispassionately;—if you think the scale preponderates in favour of the prisoner, an event I own that I cannot anticipate, you will satisfy your consciences by finding him not guilty; but if all the facts proved inevitably tend to the conclu-

sion of guilt; if the charges against the prisoner at the bar be substantiated, it will be your indispensable duty, however painful that duty may be, to pronounce a verdict of guilty.

Mr. Gurney.—It will be necessary that the other prisoners should be present for the purpose of their persons being identified.

[The other prisoners were placed at the bar.]

Mr. Adolphus.—My lord, I have to request that the witnesses for the crown may be directed to withdraw until their examinations. I do not desire it of any persons in a respectable situation of life, or of the police officers.

Mr. Attorney General.—Under those circumstances I should wish that all the witnesses should retire. The witnesses for the crown will be out of court throughout the trial.

Lord Chief Justice Abbott.—The solicitor for the prisoner will take care then that the witnesses for the prisoner shall be out of court.

EVIDENCE FOR THE PROSECUTION.

Robert Adams sworn.—Examined by Mr. Solicitor-General.

Where do you live?—No. 4, Hole-in-the-wall Passage, Brook's-market.

What are you by trade?—A shoemaker.

Were you ever in the army?—Yes.

In what regiment?—The royal regiment of Horse-guards.

How long is it since you left that service?—Eighteen years last Christmas eve.

Did you know the prisoner John Thomas Brunt?—Yes.

Where did you first become acquainted with him?—At Cambray, in France.

By what name did he then go?—Thomas Morton.

How long is that ago?—In 1816, I think.

Do you know the prisoner Thistlewood?—Yes.

When did you first know him?—On the 13th of January last.

Where did he live at that time?—In Stanhope-street, Clare-market.

Where did you see him first on the 13th of January?—In his own room, the two pair front room.

How came you to go there? did you go alone, or did any person go with you?—I was introduced by Brunt and Ings.

When you saw Thistlewood, what conversation passed at the meeting on the 13th of January?

Mr. Adolphus.—I submit that this cannot be evidence. This indictment charges a conspiring against the person and government of our sovereign lord the king, that is, the now king George the fourth; the witness is talking now of a conversation on the 13th of January; that was during the reign of the late king.

Mr. Solicitor-General.—I am giving evidence of the conversation, not of acts.

Lord Chief Justice Abbott.—Supposing that the scheme began in the reign of the late king, but was intended to be carried into effect in the reign of the present king, we must hear the whole story.

Mr. Adolphus.—I would submit whether that which passed on the 13th of January, must not be considered as referring to the then king.

Lord Chief Justice Abbott.—We cannot refuse to hear the commencement of the scheme.

Mr. Adolphus.—Then my objection will be too late.

Lord Chief Justice Abbott.—The jury will of course be informed, that the parties cannot be convicted on this indictment, if the intention was only to depose his late majesty: but if, having commenced in his late majesty's reign, they have gone on with the intention to depose his present majesty, then it will apply to the indictment: we must hear the whole of it; if it stopped short there, then it would not apply to the indictment.

Mr. Solicitor-General.—When you were introduced to Thistlewood by Brunt and Ings, what passed?—I was introduced into the room by Brunt; on going into the room Brunt said to Thistlewood, "This was the man I was speaking to you about." Thistlewood said, "you were once in the Life-guards."

He said that to you?—Yes.

What did you say to that?—No, I said, I was not; I originally belonged to the Blues. He said, "I presume you are a good swordsman." I told him I could use a sword sufficient to defend myself, but I could not say I was so clever in the sword as I was some years back, not being in the habit of using a sword or arms of any description for some time. On this he began to allude to the genteel people of this country, endeavouring as much as he could to make them mean and contemptible; saying there was not one who was worth ten pounds, that was worth any thing for the good of his country.

Did any thing further pass at that time?—Yes. As to the shopkeepers of London, he said they were a set of aristocrats altogether, and were all working under one system of government, that he should glory to see the day that all the shops were shut up, and were plundered. His discourse then turned upon Mr. Hunt; that Mr. Hunt was a damned coward, and a man that was no friend to the people; and he had no doubt, were he to get into Whitehall, and examine the books, he should find his name there as a spy for government.

That if he, Thistlewood, got into Whitehall, he should find his name on the books of government as a spy?—Yes.

How long did this interview last?—I have not done. He next turned his discourse upon Mr. Cobbett, saying Mr. Cobbett, with all his writings, was of no good to the country; and that he was a man that did not wish them

well; and that he had no doubt he was a spy equally the same as Mr. Hunt himself. I believe that finished the discourse, so far as I can recollect.

You had afterwards the misfortune to be confined in White-cross prison for debt?—Yes, I had.

When was that?—On the 17th; it was prior to the 17th.

Some other conversations took place between you and Thistlewood, before you went to prison?—Yes.

I do not want to go into the whole of them?—There were several before the 17th.

Where did those interviews take place?—The next interview I had with Mr. Thistlewood was on Sunday the 16th.

Where was that?—At the White Hart.

Where is the White Hart?—In Brook's-market. It is kept by a person of the name of Hobbs.

What kind of room was that? was it a room belonging to the public house, or a room in a back yard?—A room in a back yard; a small room.

Was any person present besides Thistlewood, at that conversation?—Yes; Ings, Brunt, Hall, and in the course of the forenoon, before it broke up, there was Tidd.

Mr. Caywood.—Will your lordship excuse me—

Mr. Solicitor-General.—I am not going to ask as to any thing that passed at that meeting; I have no objection to your asking to it; but it is not necessary, and therefore I will not take up the time. You afterwards, you say, went to prison?—Yes.

How long did you remain there?—I came out on Sunday, the day after the death of the king.

That was on the 30th?—Yes.

After you came out, did you go to any place where Thistlewood was present?—I saw him on the Monday evening, the 31st.

Where was it you saw him?—I saw him in a room on the same floor where Brunt lives; in a back room.

Where is that?—I cannot exactly tell you the number in the court.

What is the name of the court?—Fox-court, Gray's-inn-lane; it runs from Gray's-inn-lane to Brook-street.

Who were present at that meeting besides Thistlewood?—There were Brunt, Ings, Hall, and Davidson. I cannot charge my memory at this moment with any body else.

What conversation took place at that meeting?—Nothing particular took place that night to my recollection.

Did you meet them on the following night, on the Tuesday?—I cannot recollect whether I did or not.

When did you meet them again, according to the best of your recollection?—To the best of my recollection, I met them on the Wednesday evening.

Who were present on that Wednesday?—Thistlewood, Brunt, Davidson, Harrison and Edwards.

What passed at that meeting?

Mr. Curwood.—I must object to that, my lord, because it is an overt act not stated on this indictment. They have stated a meeting on the 5th of February, at the parish of Marylebone, and at divers other times and places. I apprehend “divers other times and places,” is not a sufficient statement to give the prisoner notice to be prepared. I am well aware, that even a substantive treason may be given in evidence to support an overt act of another treason; but in this case, where they have stated the overt act of meeting, without designating either time or place, I humbly apprehend it is not such a meeting as can be given in evidence under that averment. It is necessary to state the overt act on the indictment, that the prisoner may be prepared to contradict the account given of that meeting. That is my short objection; if I have made it understood, that is all I desire.

Lord Chief Justice Abbott.—This is the invariable form of every indictment, drawn either for high treason or conspiracy, that the parties met and did such and such acts, and no objection has ever been taken to the generality of such an averment; if that objection could prevail, and it were held necessary to set out the time and place of every conversation, it would lead to infinite prolixity and inconvenience.

Mr. Curwood.—I thought it my duty to submit the objection.

Lord Chief Justice Abbott.—I shall be happy to attend to any objection which occurs to you, Mr. Curwood.

Mr. Solicitor General.—What passed upon that occasion?—Nothing particular passed upon that occasion, only that I saw a number of those pike staves. Thistlewood was anxious to have them feruled, and as far as I could understand, Thistlewood expressed himself rather surprised that Bradburn was not come.

Is that Bradburn the prisoner?—Yes.

What was Bradburn by trade?—That I cannot say. Davidson in particular began to express himself dissatisfied because Thistlewood said that Bradburn had been supplied with money to buy ferules to put upon those staves, and that they were not done.

Were those staves in the room at the time?—They were.

In what state were they?—They were quite green, and appeared as if they had just come from the country.

State any thing further that passed at that meeting?—After Davidson expressed himself dissatisfied with Bradburn not coming forward to ferule the sticks for the pikes, he said he “would not give a damn for the man; he

dare say he had spent the money; a man like him was not worthy of consideration.”

Do you know any thing else that passed at that meeting?—There was nothing else further than Thistlewood making a reply, “No, no.”

I do not ask you as to any thing that passed relative to these disputes, but on any other subject?—I do not remember that any thing further passed.

How often were those meetings held?—Those meetings were held twice a day.

Up to what time were they held twice a day?—Up to the 23rd of February.

From the time you came out of prison?—Yes, they were in that room.

Did you collect from them who had hired the room?—Yes, I heard Brunt say he had hired the room for Ings.

Did he say for what purpose the room had been hired?—No, he did not; I can only conjecture for what it was hired.

Was there any furniture in the room?—No, except a stove that was fixed.

But the meetings continued to be held there from the 31st of January to the 23rd of February, in that room?—Yes.

When did you go there again?—I cannot charge my memory exactly, but I can recollect one circumstance particularly. One evening about nine or ten days before the funeral of the king, I went up into the room where a meeting was held; there was Thistlewood and Harrison sitting by the fire; they were in deep discourse, and there were two chairs; they made room for me to sit down; Harrison sat in the middle, and Thistlewood on one side and I on the other: they began to tell me the discourse that had passed between them. Harrison told Thistlewood he had met with one of the life-guards, who told him, that all the life-guards that could be spared, and could be mounted, would be at the funeral of the king; and likewise as many foot-guards as could be spared, and likewise the police officers. Harrison said it struck him, after he left this life-guardsman, that this would be a favourable opportunity for what they had in view, as the soldiers would be out of town, and the police officers as well; that it would be a very favourable opportunity to kick up a row, and see what they could do that night.

Harrison stated this to Thistlewood?—Yes, and then Thistlewood improved it; afterwards Thistlewood laid a plan.

What did Thistlewood say?—It quite met with his approbation, he said it certainly would be a very favourable opportunity, and he had no doubt, provided they could take those two pieces of cannon from Gray's-inn-lane, and the six pieces of cannon from the Artillery Ground, that they would have an opportunity, before morning, to put themselves into the possession of London.

What further passed?—Thistlewood quite agreed with the plan, so far as this, he said, if once it began and if communication went from London to Windsor to inform the army

here that they were to come to London, they would be so tired when they got to London they would not be able to do any thing.

What further passed?—Mr. Thistlewood said, he thought by persevering after they had got the cannon, it might be so ordered that they could go to Hyde Park and prevent any orderly leaving London to go to Windsor to make any communication of what had passed in London.

Was any thing further said?—In the next place he said it would be highly necessary to go to the telegraph, over the water, and take possession of that to prevent any intelligence being conveyed to Woolwich; he next proposed, as he thought by this time they should be able to form a provisional government, to seek for a provisional government, and for that provisional government to send down to the sea-ports to prevent any gentlemen being permitted to leave this country without a passport from the provisional government, he particularly mentioned Dover, Brighton, Ramsgate, and Margate, and last of all he bethought himself that Brighton would be the most particular place of any; he said it would be necessary to take a force down there sufficient to take it, "not that I suppose the new king will be able to be there at that time, or even to be at the funeral of his father," he did not consider he was well enough, but "it will be necessary to go down there to prevent any person leaving it; and as to the prince regent or the king, we cannot think of his ever wearing the crown, the present family have inherited the crown long enough."

Did any other persons come into the room during that meeting that evening?—Ings and Brunt.

What did you say about not wearing the crown?—He said, "I think it is no use the new king ever thinking of wearing the crown."

You have told us, at first Harrison and Thistlewood and yourself were there; did any other persons come in?—Brunt and Ings were not in the room at the time this conversation passed, but they came in afterwards.

After they came in, was any thing said to them?—Thistlewood got up and went to Brunt and Ings and communicated what Harrison had brought, as to what might be done on the night of the funeral of the king; Brunt and Ings heard what he had to say, but they both positively declared that there was nothing short of the assassination which they had in view, that would satisfy them.

The assassination of whom?—Of the ministers.

Had any conversation taken place on that subject before?—Yes.

At that, or a former meeting?—At a former meeting.

Will you tell us what that conversation was respecting the assassination? what that plan was?—I asked them frequently what was the plan, but the first meeting I had with Brunt he told me what was the intention.

What did he say?—He said there were two

or three of them who had drawn out a plan with a view to assassinate the ministers the first cabinet dinner that they had.

Was there any talk either at that meeting of which you have just spoken, or at any former meeting, about this assassination?—They never scarcely met but that was the object, part of it.

Was any thing said as to what was to be done, besides the assassination of the ministers?—Not at that time.

Not before that meeting when the conversation took place about the funeral?—No.

Do not speak to any thing which took place after that meeting where the conversation took place about the king's funeral, because we will go to that by and by, but do you recollect any thing further respecting the former meeting?—I cannot charge my memory with any thing further.

You say you saw some pike staves in that room; was there any thing but the pike staves carried into that room?—Yes.

Confine your statement for the present to any thing previous to the meeting at which the king's funeral was spoken of, was there any thing carried into the room previous to that time?—I cannot say whether there were previous to that time, afterwards there were, I cannot charge my memory as to the exact dates until I come to the 19th of February.

What day of the week was that?—The Saturday.

What time in the day did you go there?—Between eleven and twelve o'clock in the forenoon.

This room in Fox-court?—Yes.

Who was there at that time?—I saw Thistlewood, Davidson, Harrison, Ings, Brunt and Hall.

Tell us, in the order of time as accurately as you can, every thing that took place at that meeting, every thing that was said and every thing that was done?—On the Saturday the 19th, on my going into the room they were all set round the room seemingly in a sort of confusion, in a deep study. I had not been in scarcely a minute before they all got up and turned themselves short round upon their heels, saying, "Well, then, it is agreed we are come to the determination then if nothing occurs between this and next Wednesday night, next Wednesday night we will go to work." It was said that they were all so poor that they could not wait any longer. Thistlewood directly proposed that a committee should sit to-morrow morning, on the Sunday at nine o'clock, in order to draw out a plan to go by what they were to do. Thistlewood said to Brunt "you had better go round this afternoon and acquaint what men you think you can bring forward, in order to bring them to the committee to-morrow morning." Brunt said he had got some work to finish, and he did not think he should have any time, but he might get up in the morning and acquaint a few that they might attend, but they did not want a great many to

be in the room, Brunt appeared as if he was leaving the room, and Thistlewood seemed to recollect himself, and said, "oh, Brunt, it will be highly necessary for all that attend the committee to-morrow morning to bring arms with them in case any officers should come up." On this Brunt said, "damn my eyes, if any officers was to come into this room I would run them through, murder them, and take care after I had done it, it should never be found out." This, to the best of my recollection, finished what I saw on the Saturday in the evening, I did not go up on the Sunday morning till just turned of eleven o'clock I entered the room.

Who were in the room at that time? how many?—On going into the room, what with the fog and thickness of the snow, the room was in a state of darkness. I made towards the fire-place, but it was so dark I could scarcely tell who they were till one spoke to me; that was Tidd: he said, "How do you do, Adams?"—I said, "Is it you, Tidd? I did not know who it was."

Did you afterwards collect, from the conversation and the looking around you, who were there?—Yes, I did.

Who were there?—There were Thistlewood, Brunt, Ings, Hall, Davidson, Harrison, Cook, Bradburn, Edwards, myself, and Wilson.

Will you tell us what took place at that meeting? tell us it in the order of time?—A very little while after this, I found that the business they had met upon, which was to begin at nine o'clock, had not been entered on. Mr. Thistlewood, on looking round and counting the number of heads, says, "I think it is high time gentlemen to begin the business." Counting the heads and seeing there were twelve, he said, "I think that is quite enough to form a committee." On this Mr. Tidd was proposed to take the chair.

Thistlewood proposed that Tidd should take the chair?—Yes. Tidd takes the chair, and he takes a pike, and he sits with a pike in his hand; Mr. Thistlewood standing up on his left, and Brunt upon his right. Thistlewood began. Says he, "Gentlemen, I presume you all know what you are met here for," turning his head to the door with an allusion that he would not name what they had met for, or call the names of the different ministers over, but he turned to the door and said, "the west-end job." Brunt perceiving this, said, "Damn my eyes, never mind, mention their names, what signifies?" He was called to order directly from the chair. On this Thistlewood speaks again he says, "Gentlemen, we are come to this determination, as we are all of us tired in waiting so long for the doing this job, and as we find there is no probability of their meeting all together—"

Of whose meeting all together?—Of the ministers. "If in case they do not dine all together between this and Wednesday night we are come to a determination within ourselves to take them separately at their own houses; we shall not have such an opportunity

of destroying so many as provided they were to dine all together: if we take them separately, we must content ourselves with getting two or three or four, as we can get them. I suppose," says he, "it will take as much as forty or fifty men to do the west-end job with: and I propose, at the same time, that the two pieces of cannon in Gray's-inn lane shall be taken, and the six pieces of cannon at the Artillery-ground shall be taken." Cook proposed himself, to take the lead, and take the command upon himself, at the taking of those cannon. He proposed, after these were taken, taking the Mansion-house as a seat for the provisional government; then they were to make an attempt upon the bank of England: he directly proposed, that Mr. Palin should be the man that should be intrusted to set fire to the different buildings in different parts of London.

Was Palin to do this by himself?—If you will let me go on in my statement. To the best of my recollection this pretty well finished Mr. Thistlewood's plan that morning, and he said there was time enough between that and Wednesday night to improve it, as they could not come to any decision what time to begin, but they should have time between that and the Wednesday night to settle all that. He said he should drop the subject for the present, as Brunt, or Mr. Brunt (I cannot exactly recollect which of the two), had a proposition to make to them, respecting the assassination of the ministers, how it was to be done. On this Brunt coming forward to state his plan, Thistlewood said, "Stop, this proposition I have said to the men in the room had better first be put from the chair, to see whether they are all agreeable to what has been said." Thistlewood said to the chairman, "You had better, before you put the question, ask them all round separately whether they are agreeable, or whether any of them have any thing to say on what has been said." It was put by the chairman. The chairman asked several of them whether they had any thing to say on what had been said; nobody speaking, it was put from the chair, and was carried unanimously. Mr. Brunt now came forwards with a proposition that he had to make. He proposed that as many of the ministers as they could form an idea that they could assassinate, that it should be done on Wednesday night, without an opportunity occurred that the ministers dined all together between this and the Wednesday night. That as many men as they could get together that would go forwards to the assassination of the ministers, as many as they thought they could assassinate, those men should be divided into separate lots. After the men were so lotted, he proposed then that out of each lot there should be a man drawn for the sole purpose of assassinating the party that they went to do; and whoever it fell upon to do the assassination, that man should be bound to do it, or be murdered himself. Whatever man the lot fell upon to do the part of the assassination, if he attempted the deed, and failed

in doing it, he swore by all that was good, that man should be run through upon the spot. Upon this I got up myself, and said to Mr. Brunt, "I wish to ask you this question upon the few words you have drawn: Do you suppose it is not possible for a man to go and attempt to do a thing like that, and for the man to fail in it? Do you mean to say that that man so failing shall be run through upon the spot himself?" He said, "No, certainly not; unless the man that attempts it, if there is the least sign of cowardice attached to it, I say that he shall be run through: but, if he fails in doing it, if he is thought to be a good man, of course he shall not be run through." Mr. Brunt here dropped his discourse for the present. It was put the same as the measure of Mr. Thistlewood, from the chair and it was agreed to. Two minutes after this, before any thing had occurred, in came Palin, Potter, and Strange; they were asked to sit down by the fire, being wet, being covered with snow. Palin came and sat down next to me; as to the other two I cannot say. Thistlewood immediately proposed, or at least told them that the two plans they had drawn up between themselves, and which had been proposed by him and Brunt, had been stated; but as they were not in the room at the time they were stated, he thought it highly necessary those plans should be stated to them.

Did he relate them to them?—Yes, the same as before; Mr. Thistlewood his plan, and Mr. Brunt his, and they agreed to them the same as the rest had done. After this had been gone through by Mr. Thistlewood and Brunt, Palin gets up and says, "Mr. Chairman, I have a few words that I wish to speak on what has been dropped by Mr. Thistlewood and Mr. Brunt. Agreeing as I do with the plans that have been proposed, and having been one amongst the number that have held up my hand to assent to it, there is one thing I want to know: there are so many objects you have proposed to carry all at one time, certainly if it can be done it will be a great acquisition to what we have in view, but this is what I want to know: you talk of taking from forty to fifty men to the west-end job; now I should be glad to know where you are to find those men that will take this cannon at Gray's-inn-lane? Those cannon at the Artillery-ground, where they are to come from? No doubt you know better what strength you have got than I do: as for my own part I can give no satisfactory answer at the present what strength or what men I can bring forward to assist me; but I want to know, in the next place, before my going round to the men I intend to call upon this afternoon, whether I may be intrusted, from the committee, to communicate to them what is to be done, and then I shall better know how to act. I want to know," says he, "in calling upon the men, whether I can have the liberty to tell them in part, if not in full, what is to be done, and when they will be wanted?" The chairman, turning his head to

Thistlewood and to Brunt, says, "I suppose Mr. Palin there is no doubt but what he knows what kind of men he will have to depend upon, he will know of course whether he can depend upon the men in case he states what the plan is, and when they will be wanted. If Mr. Palin gets men of that description that he can depend upon, I do not see where the harm will be in his communicating to them what is to be done."

That was the answer given to Palin?—Yes, it was agreed to by Mr. Thistlewood and Brunt too, the chairman, for Mr. Palin to have that liberty. Mr. Palin, finding he had liberty to act in that kind of way, sat himself down and seemed satisfied. This finished the business to the best of my recollection; there was nothing transacted regularly in the chair after that, but they began to think of going home to get their dinner, in order to go in the afternoon round to their different men. On this, Mr. Thistlewood, all on a sudden, turned himself round to Brunt, and said, "Oh, Brunt, well thought of, now Mr. Palin is here, I would advise you to take him to the spot close by, and see whether it is practicable or not." That was, to go and see the new Furnival's-inn building in Holborn, to see whether it was practicable to clap fire to it.

Fox-court is close by Furnival's-inn, I believe?—Yes, it is.

In consequence of that, did they go out?—In consequence of that Mr. Thistlewood said, "as it is not far, Mr. Palin and you go up together, and return here, and give a report in."

Did they go?—They went, and were out of the room, I suppose, for the space of ten minutes to the best of my recollection.

Palin and Brunt?—Yes.

Were you there when they returned?—I was; when Palin and Brunt came back, Mr. Palin gave it in that it was a very easy job, very easily done, and it would make a damned good fire; on this they began to depart. I do not recollect that Mr. Palin continued in the room after that, but a very little while; but before they left the room, Mr. Thistlewood said he thought it would be highly necessary, either Tuesday or Wednesday, to get what men they could together, and to give them a treat; but he did not know how this was to be accomplished, we are all so poor. Brunt turning himself sharp round on his heels, he was standing by the fire, walked across the room, came back again—"Damn my eyes, I have not done little or no work for some time, but I have got a pound note for that purpose, and I will be damned if I do not spend it upon the men we have got."

Upon that, did you separate at that time?—Not just directly: on this Thistlewood said, "Where can you take them to, I should suppose we might have the room below stairs at the White Hart." Brunt replied, "I do not know; I do not much like to go there after what has been said, but never mind. I do not see that we have no cause, as time gets on, to

be afraid of the bloody traps; for if they come into the room they should not go out again." On this he bethought himself that he could send his apprentice, and his own son, out of the way by giving them a holiday, and that then he could have his own room; but he thought he should still call and hear what Hobbs should say.

Hobbs is the landlord of the White Hart?—Yes, he is. Thistlewood at the same time said he would take them up to his room; but directly after, on giving it a second thought, he said "No, that will not do, as there is an officer that lives so opposite to me, that if that officer should perceive men coming backwards and forwards to my place it will be a means of giving some suspicion there is something in it." I believe, to the best of my recollection, that finishes the Sunday morning business.

When did you meet again?—They met on the Monday morning; but I beg leave to state one circumstance that occurred in the interval of that time, of the meeting breaking up on the Sunday morning, and my calling on the Monday morning: on the Sunday evening I went to the White Hart—

You must not tell us what passed with any body else. You went and had a communication with Hobbs at the White Hart?—Yes.

That cannot affect the prisoner at the bar; therefore you must not state that.—Then we must drop that; but the principal part of what took place on the Monday morning arose in consequence of that.

Tell us what took place on the Monday morning, and, as far as that is material, it will come out in that narrative?—On the Monday morning, I went into the room about ten o'clock.

Was the prisoner at the bar, Thistlewood, there?—Yes.

Who else?—Brunt, Harrison, Hall, and Ings; I cannot charge my memory as to the others.

What took place?—They asked me how I did. I told them rather unwell, I seemed to be rather down in the mouth. What passed at the moment I cannot precisely say, but I said to them, "Gentlemen I have something to communicate to you." They all turned their eyes upon me directly, they wanted to know what I had to say. On this, I communicated to them what I had communicated to me the evening before.

You told them what had passed between you and some other person on the Sunday night?—Yes.

Who was that other person?—Mr. Hobbs, of the White Hart.

Tell us what you told them?—I told them that Hobbs had told me that there had been a couple of officers, one from Hatton-garden and another from Bow-street, to ask him whether there was not a radical meeting held there. I told them, as Hobbs told me, there was information at Bow-street office, and likewise

at lord Sidmouth's office, that there was a meeting of that description held at his house, the White Hart.

This you told to the meeting?—Yes.

Upon that, what was said or done?—Harrison turned himself round to me like a bull dog, "Adams you have acted damned wrong." I said, "In what?" Brunt turned upon me like a lion, and said, "You have acted wrong;" he said, "whatever you had heard it is your duty to come and communicate it to me, or Mr. Thistlewood." I said, "I did not conceive that I had any right to withhold it from any one; that I thought it my duty to communicate it to all, as it concerned all." They swore at me again, and said I had no business to communicate it to any body except them two.

Mr. Solicitor General.—Will your lordship permit my learned friend Mr. Gurney, to proceed with the examination?

Lord Chief Justice Abbott.—Certainly.

Mr. Gurney.—What was said in answer to that observation of yours?—They said I had no business to communicate any thing I heard out of the room. I said, "What would you have thought of me had I after hearing such a communication as this, such a report as this out of doors, that the proceedings were reported out of Bow-street office and lord Sidmouth's office, kept this to myself, and suffered you to go on? After you were taken and all prisoners, it would have come out that I was the person that knew of that, and might have prevented it."

Did any thing particular more pass at that meeting?—There was nothing particular.

How soon did you meet again?—There were some other circumstances on this morning before the meeting broke up. After I had met with this rebuff from them, they directly began to propose leaving, saying they had a number of men to call upon, and they must wait upon them; and that they had a meeting of what they called the Marylebone Union.

Was any thing proposed by either of them to be done respecting the Marylebone Union?—Brunt said he must wait upon the Marylebone club, and that there were several of them said they should attend there themselves; that they would all be there, for that they wanted some money. It was asked by one in the room, whether he thought it would be of any use calling there upon that speculation? He told them yes, it would.

Who said that?—I cannot charge my recollection who it was; it was one of the party. It was Brunt that said, "Yes, it would." I cannot recollect who it was that put the question.

Before you went, was any arrangement made about where you were to be in the evening?—Yes.

Where were you appointed to be in the evening?—I was appointed to be in the same room in the evening.

That was the room in Brunt's house?—Yes; that was proposed by Thistlewood.

Were you told what answer you were to give to any that might come?—I had no orders to that effect.

Was there to be any meeting there that night?—There was not, further than this, I was ordered to attend in case any one should come that was not there in the morning; as those that were there in the morning had all of them pretty well agreed to be in the Marylebone Union that night.

You were to say there was no meeting there that night?—Yes.

Did you go there that evening?—I went to Brunt's room.

Did any of the persons that you mentioned come there that evening?—Potter called, I think.

Any body else?—No; I had not been there long before Potter, being wet, called, and said he would go and have a pot of beer, and he went to the White Hart.

And you went with him?—Yes.

Did any persons come to you there?—Yes.

Who were they?—Palin and Bradburn.

The next morning did you go again to the room?—Yes, I did.

That was Tuesday morning, the 22nd?—Yes.

Who were there at that time, or in the course of the morning?—There were Brunt, Thistlewood, Ings, Hall, Davidson, Harrison, Wilson, Palin, Potter, and Bradburn.

While you were there, was any intelligence brought you respecting any cabinet dinner?—Yes; Mr. Edwards came in and went to Thistlewood, and tells him there was a cabinet dinner to be on the Wednesday night.

That was the next day?—Yes; Thistlewood said, "I do not think that is true."

Upon that, was any thing done to ascertain whether it was or not true?—Yes; Thistlewood proposed to send for a paper to ascertain it.

Was a newspaper sent for and brought?—It was.

Upon that, what passed?—Upon the paper being brought into the room they were all satisfied, from the statement that the paper made.

Was the paper read?—It was read by Mr. Thistlewood, he read it out; that the cabinet were to dine at earl Harrowby's, in Grosvenor-square, on Wednesday evening.

What was said upon this being announced?—Upon this Mr. Brunt walked towards the window, "Now," says he, "I will be damned, if I do not believe there is a God; I have often prayed that those thieves may be collected all together, in order to give us a good opportunity to destroy them, and now God has answered my prayer." Upon this Thistlewood proposed that there should be a committee sit directly.

Do you remember Ings saying any thing?—I cannot charge my memory at the moment.

Who was put into the chair?—I was put into the chair myself.

Upon that, did any person make any proposition?—Mr. Thistlewood came and stood by me, after I was in the chair, and had called to order, he came and began to speak. Now I beg you to hear me state some things which, if you pay attention, I will tell you, what has transpired.

What did Thistlewood propose?—He proposed to sit directly, to form a fresh plan regarding the assassination. He was going to proceed, I being in the chair, I interrupted him.

What did you interrupt him to say?—I said, "Gentlemen, after what fell from my mouth yesterday morning, I hope you have all given it a due consideration."

That was your mention of what Hobbs had said to you?—Yes; this same discourse had passed between me, Bradburn, and Palin, the night before.

Had you mentioned to Palin what had passed the day before?—Yes.

What did the meeting say or do upon this?—Upon this Harrison walked backwards and forwards in the room, they were all in a state of confusion, more like a set of madmen than men. Harrison looked at me, and said, "Damn your eyes! the next man that dropped a word to cool any man, and to prevent their going forward to do the deed they had determined on, he would run that man through with a sword."

In the result, did you remain in the chair, or were you put out?—I remained for a few minutes.

Were you put out then?—I was.

Who was put in?—Mr. Tidd. Thistlewood wanted to proceed in the business, Palin sitting down, said, "No, stop; what has dropped from Mr. Adams's mouth, respecting what was communicated yesterday morning, I want to be satisfied on, before the business proceeds further."

Without giving me all the discussion that took place, did it end in Brunt making any motion to do any thing?—Yes, Brunt got up; he proposed, in order to do away any suspicion from what had passed, that there should be a watch put on the earl Harrowby's house that night.

What was that watch to do?—There were to be two men go on at a time.

What was the object of their watching?—The object of their watching was, that they should watch to see if any men or soldiers went into the house of earl Harrowby, in order to way-lay any body that might go in.

Was that motion approved of?—It was.

At what hour that night was it ordered that any watch should be set?—At six; men to go on at six stop till nine; at nine they were to be relieved by two more, that were to stop till twelve; then the watch was to commence again on the Wednesday morning, at four o'clock.

That was carried, and the watch ordered?—Yes.

What did Brunt say after that?—I cannot charge my memory.

Did Hall make any motion?—Not directly; Thistlewood then came forward, when Mr. Tidd was in the chair, "Now," says he, "after what has fallen from Mr. Brunt's mouth, I hope every one will be satisfied, if in case there is nobody found to go into the house, such as officers or soldiers."

By officers, do you mean police officers?—Yes; that he thought it would be best to enter into a fresh plan; that if nobody was seen to go into the house, they were determined to do what they talked of to-morrow evening; the plan altogether of the Sunday morning was altered, so far as respected the assassination. Mr. Thistlewood proposed that it would take from forty to fifty men; forty men ought to be allowed, but more if they could get them. "It would answer our end," says he, "much best their dining altogether, than to run the risk of taking them at their own houses separately. In doing that," says he, "we could not command more than three, I dare say, at most. In doing this," says he, "their meeting all together, as there has not been a meeting so long, there is no doubt there will be fourteen, or we will say sixteen, which will be a rare haul to murder them all. I propose," says he, "going to the door with a note to present to earl Harrowby; when the door is opened for the men to rush in directly, seize the servants what are in the way, present a pistol to them, and directly threaten them with death, if they offer to make the least resistance or noise." This being done, a party were to rush forwards to take the command of the stairs: two men were to be placed at the stairs, leading to the upper part of the house; one was to have fire arms, to be protected by another with a hand-grenade in his hand: a couple of men were to take the head of the stairs leading to the lower part of the house: those two men placed at the stairs leading to the lower part of the house, were to be armed the same as the others at the other stairs. If any servants attempted to make any retreat from the lower part of the house, or from the upper part of the house, these men with the hand-grenades, were to clap fire to the hand-grenades, and fling it in amongst them altogether. Two men at the same time were to be placed at the area, one with a blunderbuss and another with a hand-grenade: if any body attempted to make their retreat from the lower part of the house that way, they were to have a hand-grenade thrown in amongst them there. At the same time all these objects were to be accomplished by the means of securing the house; those men who were to go in for the assassination, were to rush in directly after.

Into what part of the house did he propose they should go?—Where their lordships were.

And what to do?—To murder all they found in the room, good or bad; he said, that if there were any good ones they would murder them for keeping bad company.

Was this proposition agreed to or dissented

from?—It is not finished. Ings volunteered himself to enter the room first—

Did he say what with?—That he would go in with a brace of pistols, a cutlass, and his knife in his pocket, with a determination, after the two swordsmen that were appointed to follow him had despatched them, to cut every head off that was in the room, and the head of lord Castlereagh and Sidmouth he would bring away in a bag; he would provide for the purpose two bags. As soon as he got into the room he said he should say, "Well, my lords, I have got as good men here as the Manchester Yeomanry. Enter citizens and do your duty." Upon this word of command from Ings, as I have before observed, the two swordsmen were to enter, to be followed by the rest of the men with pikes, pistols, cutlasses, or whatever it might be, and to fall to work immediately in murdering as fast as they could.

Whom did Thistlewood propose to be the two swordsmen?—Harrison was one that he picked out, and I, myself, for another, being the only men, as he supposed amongst them, that were used to the use of the sword, and men of the greatest strength and power.

Had Harrison been a soldier as well as you?—Harrison had been in the life-guards. On Harrison being proposed to go into the room, Thistlewood turned his head to me and said, "Adams will not you be one?" I seeing no chance of escape, knowing that if I did not assent my life was in danger, I assented to it.

Did Thistlewood propose any thing to be done in any other places except lord Harrowby's?—After the execution was done in the house they were to leave the house as quickly as possible; in doing this, Harrison was the man that was appointed to go to King-street horse barracks, I believe it is in King-street, the barracks where the horses were at any rate, and to take one of those fire-balls to fling into the straw shed to set fire to the premises.

Whither was the party to go from Grosvenor-square?—Harrison was to be supported by Wilson; after they had left the square they were to proceed—

Do you mean Harrison and Wilson, or the rest of the party?—The rest of the party: they were to proceed to Gray's-inn-lane to the City Light-horse barracks.

For what purpose?—For the purpose of meeting a party of men that were intended to be planted there, and in case those men found themselves not sufficiently strong to take the two pieces of cannon at the Light-horse barracks, they were to wait their arrival and they would assist them.

To what place were they to go then?—They were to proceed from thence to the Artillery-ground, where Mr. Cook was to be appointed, in order to lend him a hand in case he had found himself not sufficiently strong to take the six cannon there.

To what place were they to go then?—Mr. Cook was to wait there for the arrival of Mr.

Thistlewood? if he did not like to proceed he was to bring the cannon from the ground into the street, and to load it, in order to be ready to fire on any persons that might interrupt them, but if he found his strength sufficient to enable him to proceed, he was to advance from there to the Mansion-house; if he found himself capable of advancing to the Mansion-house he was to divide the six cannon into two divisions, and take three on one side and three on the other, three on that next the Royal Change, three next Cornhill; then he was to demand the Mansion-house, and, on a refusal he was to fire at it on both sides; it was thought, on doing that they would soon give it up.

Did he say what use was to be made of the Mansion-house?—It was for the provisional government to sit in.

After the Mansion-house was taken and made a seat of the provisional government, what was done next?—This underwent a little alteration the succeeding day.

Was any other place mentioned near the Mansion-house?—Yes, the Bank of England: that was the next place to be attacked.

What did he say was to be done there?—To plunder the Bank of all they could get, but not to destroy the books if they could any way help it, for they thought by keeping possession of the books that would enable them to see further into the villainy that had, he said, been practised in the country for some years past; the further proceedings, as far as the regulations of it altogether, were to be left till the Wednesday, but it was mentioned particularly that Palin's plan should be proceeded in the same as had been proposed; but as to the time, they did not come to any decisive time, though it was talked of between eight and nine o'clock, but it was not settled.

Was any watch set on lord Harrowby's house on the Tuesday night?—Yes.

Who were the first that were set?—I wish to state something before that, if you please.

What is that?—After the chair was left, being in a bustle about the room, Harrison proposed there should be a counter-sign, and the men that were to go about that day to inform men that were to help them the next evening should communicate the counter-sign, the counter-sign was *button*, the man that came up was to say, *b, u, t*, the man that was in waiting that was to be appointed to receive him was to say, *t, o, n*, these put together were to produce *button*, this being done was a token that the man that pronounced this was one of the party; a man was to be appointed to stand at the end of Oxford-road, in order to communicate to any man that came up to him the room where they were to be appointed to meet at the next night.

In the course of that evening, or that night, did you go on watch at lord Harrowby's?—I did, but there is something I wish to state before I come to that.

Mention any thing I have omitted?—In the afternoon, if you will allow me, after I left

them I called up in the room again; in going up stairs I perceived a strange smell in the house, on going in I found Edwards, Ings, and Hall.

What were they doing?—Edwards was making fuses to put to the hand-grenades.

What was Ings doing?—Ings was dipping some rope yarn, picked for the purpose, into stuff to make what they termed the illumination balls for Mr. Palin.

What was Hall doing?—Dipping those into an Iron pot.

He was helping Ings then?—Yes, he was. Hall was putting shreds of paper on the floor to receive these after they came from the pot, to prevent their sticking to the hand, they were wrapped up in it.

While you were there did any other persons come in?—Not then; I did not stop a very few minutes, I had a little business of my own; I called up again the same evening.

When you called up again, what was that for?—When I called up again in the evening I found a couple of strange men I had never seen before.

Whom did you find them to be?—I found one of them to be Harris; I do not know the name of the other.

Were Brunt and Tidd there?—Brunt was there, Tidd was not, Thistlewood was there; there was nothing particular transpired.

Did any body go off to keep watch?—Yes.

Who went?—They did not go from there, to the best of my recollection.

Did any body come as from the watch?—No; Davidson was one that went on at six o'clock.

You suppose Davidson was to have gone at six?—He was there; because I was one that relieved him.

When did you go?—About half past eight o'clock; Mr. Tidd came into the room, saying, that he was disappointed in a man that was to have met him, that he was to have brought up there: on this Tidd and Brunt, being appointed in the morning to go and watch at nine o'clock, they conceived it, within themselves, time to start; they started, and in less than five minutes afterwards Brunt came back again; they had, in the interval of Brunt's leaving the room, called at a public house in order to meet the man, and found him there. Brunt came back, saying, that Tidd could not go; that Tidd had met the man that was to go, and that he was a man likely to be of great consequence; on this, looking round the room, he asked me to go. Just as I was going out, in came Edwards from the watch. I asked Edwards if there had been any thing particular seen, he said, "Whatever was seen I shall communicate to Mr. Thistlewood." I took that for a slap of the face for what had been said by me on the Monday evening.

Did you go to Grosvenor-square?—I did.

Who went with you?—Brunt.

When you got to the square, whom did you find on the watch?—When I got to the square

I saw Davidson; Brunt went up to him, I walked forwards, there was another man, but to say who he was, I could not.

Did Brunt and you keep watch?—Directly Brunt had relieved Davidson. I had, prior to going up to the square, hinted to Brunt that I felt myself rather tired.

Did you and he go to any public house?—Yes, we did; we had some bread and cheese and porter; we took some bread and cheese with us, and got some porter there.

Where is this public house?—Directly behind lord Harrowby's house, at the corner of the mews leading up to lord Harrowby's house.

Did you do any thing there?—There was a young man that was sitting there; there were, in fact, two or three that had been playing at dominos.

Did either of you play at dominos with him?—This young man gave Mr. Brunt a challenge, and he played at dominos with him.

Did you then go out and walk in the square?—We stopped there till eleven o'clock, and then we went out.

Did you walk in the square?—Yes. I walked some time till I got ashamed of myself, and I walked to the back of the square, and met him on the other side of it.

Who relieved you?—Nobody.

At twelve o'clock, did you and he go home?—We went home.

Mr. Solicitor General.—On Wednesday, the next day, did you go again to Fox-court?—I went in the afternoon, not before. Mr. Edwards called on me before I was up; my wife was not dressed; she asked who was there.

What time did you go to Fox-court? Were those persons assembled?—I went there between two and three o'clock.

Whom did you find at Fox-court at that time?—I found nobody there but Mr. Brunt, in his own room; his wife was going in just at the time.

That was in the front room?—Yes.

While you were in that room, did any body come in?—Strange came in.

Did Strange come in alone, or was any person with him?—He came in by himself.

Did any others come in?—Two more came in, in five minutes. I turned my head and saw two pistols lying upon the drawer. In consequence of these two fresh men coming in, Brunt proposed to go from that room to the room where we regularly met.

Had any thing been done with the pistols before that? Had they been touched?—No farther than handling them.

Was any thing done with the flints?—Now I recollect: they were trying the flints in them.

Who was trying the flints in them?—Mr. Strange, and one of the strangers who came in.

Brunt proposed going into the back room?—Yes.

In consequence of that, did they go into the back room?—They unlocked the door, and went into the back room directly.

Did you go with them?—I did. On going

into the room, I saw a number of cutlasses. I saw a blunderbuss. I saw several pistols, and those pistols that were in Mr. Brunt's room as well were brought from there into the back room. They placed themselves, the two strangers in particular, and began to put the flints into the pistols. We had not been long in the room before Mr. Thistlewood came in. Thistlewood had not been long in the room before Ings and Hall came in. Thistlewood, on coming into the room, looks round him, "Well, my lads, this now looks something like as if there was something going to be done." He comes to me, claps his hand upon my shoulder, and says, "Well, Mr. Adams, how do you do?" I told him I was very unwell, and was very low in spirits. He said, "What is the matter?" "Why," says I, "one thing, I have not had any thing to drink to-day. I feel myself very faint." He said, "you shall not be very long without." He said, "Brunt, send out for something, Mr. Adams is low in his spirits." He said, "By God, you shall not be long without something," and he sent out for some gin and some beer.

That was produced, I suppose?—Yes, in the interval of this time of the beer being fetched, Thistlewood said he wanted some paper in order to write some bills on.

Upon that, what was done?—He wanted a kind of paper, he could not tell what to call it but the paper the newspapers were printed on. I said to him, "Cartridge paper will answer your purpose equally the same as the other, as you do not know the name of the other; that will answer your purpose." Thistlewood said, "who will fetch it?" Brunt says, "Either my boy or the apprentice shall fetch the paper."

He had both a son and an apprentice?—Yes. He put his hand into his pocket, and gave Brunt a shilling to fetch half a dozen sheets of cartridge paper: the paper was brought, a table fetched out of Mr. Brunt's room, and a chair, in order for Mr. Thistlewood to sit down and write upon the table. Thistlewood sits down to write three bills to stick up against the different buildings that might be set fire to, to acquaint the public what deeds had been done. The bills, to the best of my recollection, I will not pretend to say that I can tell every word that was written on them—

Was this bill afterwards read by Thistlewood?—It was read by Thistlewood.

Will you tell us what words he pronounced?—"Your tyrants are destroyed. The friends of liberty are called upon to come forward. The provisional government is now sitting. James Ings, secretary, 23rd February, 1820." In writing the last bill, I perceived Mr. Thistlewood to be extremely agitated, so much so that he could hardly write: he expressed himself to be extremely tired; he did not know what was the matter with him, but he could not write any more.

After these three last papers were written, was any thing else written?—There were three other bills that were proposed to be written;

one was drawn up in part. These other bills were to make an offer to the soldiers.

You say one of these was drawn up in part?—Yes.

Was it drawn up by Thistlewood, or by any other person at Thistlewood's desire?—By another person at Thistlewood's desire.

You have told us that Thistlewood was very much agitated, and expressed himself extremely tired: In consequence of that, did he make any proposal to any other person that was present?—Yes; he proposed first that Hall should take the pen. Hall refused it: another man that was in the room, whom I had never seen before, was proposed to sit down and take the pen, he objected, but afterwards he took it.

The proposal was made by Thistlewood to Hall who declined; in consequence of which a proposal was made to another person in the room whom you do not know, but though he objected at first, he afterwards sat down and took the pen?—Yes.

Did this person who took the pen write of his own head, or did Mr. Thistlewood or any other person, dictate to him what he was to write?—Mr. Thistlewood dictated to him what he was to write.

Will you tell us what was dictated, as well as you can recollect? I do not ask the precise terms, but the effect and the substance?—I will give you what I saw wrote——

Mr. Curwood.—My Lord, I object to that.

Mr. Solicitor General.—Did you hear the words expressed by Thistlewood?—Yes, not only then but several times.

There are certain rules of law by which we must abide. Tell us the words he dictated to that other man.

Mr. Adolphus.—Tell me first, have you any memory of it but from having seen it in writing? Did you see it in writing?—Yes.

Mr. Solicitor General.—Do you recollect what Mr. Thistlewood said at the time? What were the words that he uttered?—Yes, I can recollect so far as this.

Mr. Adolphus.—I shall take your lordship's opinion upon this. This professedly is reduced to writing. I apprehend when any matter is put down in writing that cannot lie nor alter; it is not to depend upon the recollection of a bystander, but having assumed an embodied form, the writing is to be the evidence of what is reduced to writing.

Mr. Solicitor General.—To avoid all argument, let us ask a single question. What became of those papers? Were they left with Mr. Thistlewood?

Mr. Adolphus.—That is not the way of putting the question.

Mr. Solicitor General.—What became of those papers?

Mr. Adolphus.—The mischief is done now by the question.

Lord Chief Justice Abbott.—I am sorry for it; but I am not sure that, strictly, it is not correct, to ask whether they remained with him, or were taken away.

Mr. Solicitor General.—What became of those papers?—I cannot say; the last time I saw them they were doubled up. I saw one in the hands of Mr. Thistlewood, doubled up; another in the hands of Ings, as he was equipped; I naturally supposed he had put it into Ings's hands.

Have you seen any of them since?—No, never.

Mr. Solicitor General.—Then now we have given notice to all the prisoners.

Mr. Adolphus.—I admit the notice, but you do not prove the possession.

Lord Chief Justice Abbott.—The last he saw of them was in the hands of Ings and Thistlewood. This is the last account we have of them: therefore you must trace them out of your possession.

Mr. Adolphus.—These papers are a joint act written by another person.

Mr. Solicitor General.—What became of the paper you are now describing, written by the dictation of Thistlewood?—I do not know what became of that more than another. I will tell you what I can swear was upon the paper.

Mr. Adolphus.—That is just what I am objecting to.

Mr. Solicitor General.—Was that paper completed?—It was not completed.

What was the reason that it was not completed?—The reason it was not completed was, the man that was writing it and Thistlewood together could not come to know the particular terms respecting the wording of the bill altogether, and in consequence of that the bill was drawn. Mr. Thistlewood, at the same time, expressed himself very much dissatisfied, saying, that he had spoken to a man to do those bills for him as much as a fortnight ago, that the bills were drawn out, and he had not seen him since.

You say he was not satisfied as to the whole of it. What did you hear Thistlewood tell him to write down.

Mr. Adolphus.—I object to that.

Mr. Solicitor General.—I did not ask what was written, but what Thistlewood told him to write down.

Lord Chief Justice Abbott.—Do you mean to argue it further, or do you rely on the argument you have raised? You object to the reception of this evidence on the ground, that what was said by Thistlewood was taken down in writing?

Mr. Adolphus.—Yes, my lord: and all the evidence which has since been added is, that

all that he dictated was written, that the paper was left unfinished, and that he said he had given instructions to another man, a fortnight before, but that it was not done.

Lord Chief Justice Abbott.—What became of this paper?—I do not know.

In whose hands did you last see it?—The hand that I saw the writing in last, was the hand of the man that last wrote it.

And who he was you do not know?—Who he was I do not know.

Lord Chief Justice Abbott.—Mr. Solicitor General, we entertain some doubt.

Mr. Solicitor General.—If your lordships entertain any doubt, we will not press the evidence.

Lord Chief Justice Abbott.—There is some doubt entertained in some part of the court; you will not press it then?

Mr. Solicitor General.—No, my lord. Before those bills were written, was Ings in the room?—Yes.

Did he do any thing for the purpose of preparing himself in any way?—He was preparing himself in the manner he intended to enter the room where their lordships were, he puts a black belt round his waist, in order to contain a brace of pistols; he puts another black belt on to hang a cutlass to his shoulder: after this, there was a bag hung to each shoulder, a large bag to each shoulder, in the form of a soldier's haversack. When these bags were on, he placed a brace of pistols, one of each side; he hung a cutlass; he viewed himself and said, "Damn my eyes! I am not complete now. I have forgot my steel!" With that he pulled out a large knife, and began to brandish it about.

Describe that knife?—I will mention it presently. He brandished his knife about as if he were in the act of cutting the heads of those he intended to cut off; he would bring away a head in each hand; and the hand of lord Castlereagh he would cut off and procure that which might at a future day be thought a great deal of; and these expressions of his have been repeatedly used; it would be impossible for me to say I could stand here and recollect the times he had said this.

Lord Chief Justice Dallas.—He had expressed himself in this way many times?—Yes.

Mr. Solicitor General.—He described the knife?—Yes, the knife is a large broad-bladed knife, to the best of my recollection; it is from ten to twelve inches long, according to the calculation of my eye; the handle is bound with wax end; this was bound round as he declared, in doing the thing that his hand should not slip; and the breadth of the blade of the knife with the best calculation I could make with my eye, I never measured it——

While Ings was arming what were the others doing?—Arming, fixing the leathers to hold

pistols with, and placing them in the belts. Another man was busy in putting the cutlasses into slings, to hang by the wrists; it would be impossible to describe all the transactions.

At what hour did the first persons leave the room, to go to these transactions?—As near as I can tell about half-past four, or a little before five.

About half-past four or a little before five?—Yes, or from that to five.

Do you remember Palin's coming in?—Yes.

At what time do you suppose he came in?—About half an hour before I left.

Tell us what passed when he came in?—Thistlewood and Brunt were there at the time, but Palin had not been in at the time before; Thistlewood and Brunt on some business or other left the room, but what I do not know: during their absence, Palin began the concern, to speak to what men there were in the room. He said, "Gentlemen, I hope all that have met here this afternoon are well acquainted what you have met upon; you are informed what you are met here for; in the first place, you ought to think within yourselves, whether you are going to do your country a service or not: if you are in possession of what you are going to do, you first of all ought to examine yourselves whether you think the assassination will be countenanced by your country: if you conceive that the assassination will be countenanced by your country, and that the people of the country, after you have done it, will turn of your side: it is necessary, I say, that every man that is here going to turn out on this piece of business, will come to an explanation with yourselves, that every man that flinches from his duty, or turns out a coward, should be run through by one of the party directly on the spot." He said, "unless you come to this determination, it will be impossible to do any good." He was going on to say a few words more, but a tall man in the room interrupted him.

Where were Thistlewood and Brunt then?—They were not come in.

Do you know who that tall man was?—No.

Should you know him if you saw him?—No.

What did he say?—He said, "you seem to speak as if every man were in possession of what we were going upon, now this is what I should like to know, what we are actually going about."

That man was a stranger; had he attended the previous meetings?—He had not.

It was the first time you had ever seen him?—It was the first time I had ever seen him.

He said to Palin, "I can see pretty well the meaning of your speech, as for myself, if we come to any determination to turn out, with a view to serve our country, I am a man that is not afraid of himself, and that man that is afraid of himself, ought not to have any thing to do with a concern like this."

How long was this before Brunt and Thistlewood came into the room?—I do not recollect seeing Thistlewood after that on that day.

Do you remember Brunt starting?—Yes.

At what time? and who went with him?—Brunt came after this, and perceiving an alteration in the countenance of the meeting, he wished to know the cause of it: he was told there were some in the room who wanted to know further of the plan, and what they were to do.

Upon this being told to Brunt, what did he say or do?—He said, this was not the room for them to be told what they were to do, but go along with him to the other room in Edgeware-road, there every one should be apprised of what they were going about. Brunt directly began to wish to put them in movement in order to go, he said he would take good care all that went along with him should have a drop of something to drink, to put them in spirits. This tall man, in answer to that said, "I hope you are not going to drunkenness, because drunkenness in a thing like this was of no good; because a man drunk the only service he is of is to run himself into the hands of his enemies."

That was the same stranger you mentioned before?—Yes.

After this did Brunt go away?—He began to be on the movement to go away.

Who went with him?—I went out first, and there was Strange at that time and this tall man, and three or four others, that I do not know, that went with him: it was agreed they should go along the street, in order to put a stop to any suspicion from going along in a body, they were to walk two and two in the street, and not to walk in a body with each other. I starts, and going along Holborn I had a tap on the left side, calling me by my name, Mr. Adams.

Who was that?—I cannot swear to that, it was a little man.

Was he one of the persons who had been at this meeting?—Yes.

You had now got out of the room?—Yes.

Was there any cupboard in the room?—Yes.

What was usually kept in that cupboard, during the interval from the time you first went into the room, after your first liberation from prison?—That cupboard was applied to keep the different things that were brought to the room, such as swords, the first thing I saw in it; the next thing were some hand-grenades.

Do you remember any flannel bags?—Yes.

What purpose were they used for, and how were they filled?—For the cartridges for the cannon.

Were they filled?—I saw one filled, and no other.

You have said before, there were some poles which appeared to have been recently cut?—Yes.

And some ferules fixed on them; where was that done?—In Brunt's room.

In the back room?—In the back room.

Were all the arms kept in the room?—No, they were not.

Where were the rest kept?—The dépôt was at Tidd's.

Do you know where Tidd lived?—Yes.

Where was it?—In the next room adjoining to myself.

That was in Hole-in-the-wall passage?—Yes.

Near Baldwin's-gardens?—Yes.

Was that the place where the greater part was kept, or how?—That was the place: I found them after I came from prison, the day or night afterwards: that was the place appointed to take in things. Thistlewood was always in a hurry when there was any thing in readiness to be taken there; he called it the dépôt.

Did he give any reason for that?—Yes.

What was that?—In case any body should come up, such as any officers or any person, who had no knowledge of their intention, to see these things, might have some suspicion that there was something in it more than they were aware of, that these things should be put out of the way, in order for a blind.

You told us a short time ago, that you and several persons left the place at a certain time; what had you? had you any arms?—I had a blunderbuss; it was proposed I should carry it being tall; that I should with the sling that was attached to it, cover my coat over it, without its been seen, and Brunt had got a broomstick prepared to receive a bayonet, it was proposed I should take this, which would serve as a walking stick.

Was there any other description of arms but those you have mentioned, that you knew of?—There were the hand-grenades.

You have talked of pike handles, were there any pikes made for them?—Yes.

What were they made from?—From old files pointed up.

Were there any old bayonets?—There were some old bayonets.

You have mentioned a kind of blunderbuss you were directed to carry; what kind of barrel was it?—Brass.

Did Brunt go with you all the way?—When this little man came to me, in Holborn, and told me to slacken my pace, that Brunt was gone back, that if I would slacken my pace they would overtake me, before I got to the top of Oxford-road; in consequence of this, I slackened my pace; I then went on to the top of Oxford-street, this side where Park-lane leads to, I crossed over to see who was behind me; seeing no one behind me that I had no knowledge of, I turned to the wall to make water.

You found none of your party were in sight?—No.

Did you in consequence turn back?—I went forwards.

Did you afterwards turn back?—I afterwards turned back to the end of Park-lane.

Did you meet Brunt?—I did not then.

Did you afterwards meet Brunt?—I met him afterwards.

Where did you meet Brunt?—Some considerable way below Park-lane, but I had been walking about so long.

You had missed your associates, and returned back and met Brunt?—I met Brunt, and he said where are you going? I said, I am going home: then there was another man with him: I said I do not know where to go. I did not know where to go.

It at last came to this, that you returned with him?—I returned with him.

Did you go along the Edgware-road?—I did.

Did you then meet Thistlewood?—I did.

Did you then with Brunt and Thistlewood, go on to Cato-street?—Yes.

Where did you go to in Cato-street? did you go to a stable?—Yes.

When you got to the stable whom did you see at the stable door, or near it?—As I got to the archway (I walked some short way behind them) I saw Brunt enter, Thistlewood followed.

Did any body come up while you were staying behind, and say any thing to you?—Harrison came up and said, Adams, come, go in.

Whom did you see in the stable?—I saw on the ground-floor Davidson, sitting down, and Wilson standing, it appeared to me as if they were doing something to the pikes.

Did you go up the ladder?—Yes.

Did you find Thistlewood there?—Yes.

Whom else?—I found Thistlewood and Brunt, Ings, Hall, Bradburn, Strange, Cooper, Wilson (Wilson was below), this tall man I have alluded to, and several others that I did not know by name.

How many were there above stairs, in the first place?—There were above stairs at the conclusion of it——

When you first came?—I cannot say.

How many were there at the conclusion of it?—At the conclusion Thistlewood made—at the conclusion there were eighteen, and two below.

When you went in did you see any carpenter's bench?—Yes.

What was on it?—Arms of different descriptions.

Lord Chief Justice Abbott.—There were candles then?—Yes, one.

Mr. Solicitor General.—Was there any chest at that time?—Yes, at the end of the window where I placed myself; a kind of a trunk.

When you first went in what were they doing?—I found them all handling the different things, some cutlasses.

Was there any refreshment of any kind?—There was some beer standing on a table or a bench.

Was Tidd there at that time, or did he come in afterwards?—I did not see him for twenty minutes before the officers came in.

When Tidd came in, what passed?—Tidd proposed going from the room to the square, to see whether there was any noise particular, or whether the ministers of state were getting together to lord Harrowby's house, and he was gone for some time.

Who was?—Thistlewood. On Thistlewood's coming back, as I was standing up in the loft I heard below stairs in the stable a deal of talking, in consequence of that I went down.

Whom did you see below?—I found Thistlewood, Brunt, Davidson, Harrison, and Wilson on going down into the stable; as soon as they perceived me, before they perceived me, they were talking closing together, they saw me and said what good news they had got, and all in a bustle; I said, what good news? and they said, the carriages are getting there as fast as they can, no less than six or seven carriages are already arrived—Brunt turned round, and said, "Damn my eyes! what a haul we shall have amongst them!"

Did you go up stairs after this?—Yes.

What happened?—The first thing was seeing Thistlewood and Brunt in this form together, seeing Thistlewood much agitated.

Did Tidd afterwards come in?—Yes.

How soon afterwards?—A very little while.

Before Tidd came in was any thing said about Tidd?—Yes, that was what Thistlewood and Brunt were talking about; on Thistlewood turning away, it was perceived there was something the matter. Ings turned round and said, "Do not think of dropping it now; if you do I shall hang myself, I shall go mad." It turned round the room, that Tidd was not like to come; Thistlewood said, he would forfeit his existence that Tidd would come; afterwards I saw him come in.

Without going through the detail of all that passed up stairs, was any thing afterwards done or said by Thistlewood, to move some of them on one side to ascertain what should be done?—On Thistlewood making an observation at the end of the bench, that he hoped they would not give up what they had begun, if they did, it would turn out another Despard's job.

Was that after Tidd came in?—Yes, upon this Thistlewood began to count the number of men that were in the room, "Let us see, there are eighteen in the room, two below stairs, altogether there are twenty; you say, there are not sufficient to go; I say there are plenty."

After he had counted those above stairs, and those below, and said there were plenty, what did he propose?—He said, fourteen would be sufficient to go into the room, and the other six would be sufficient to take care of the servants, and of the house; on this the fourteen men were picked out on that side of the room that the ladder led into: on the men being called together there, Brunt starts the gin bottle round, which I believe he produced from his pocket: "Now (says he) I conceive this number of men is quite sufficient."

Brunt said?—Thistlewood. "Supposing lord Harrowby should have sixteen servants; they are not prepared, we are; we can go and do what we have to do and off, in ten minutes time." I do not recollect any thing particularly dropping from Thistlewood after that.

Did you hear any disturbance below about that time or shortly afterwards?—Almost directly afterwards.

What did you hear or see?—We heard a person down below, and all of a sudden there was a voice at the bottom of the ladder, "Holloa! shew a light."

At the bottom of the ladder leading up to the loft?—Yes; upon this signal being given at the bottom of the ladder, Thistlewood turned round to the candle at the bottom of the bench, and turned round to see who was coming; and he put the candle at the bottom of the bench quite confused. At this instant of time the officers ascended the ladder, took the command of the room, at the head of the ladder in the room.

What do you mean by the command of the room? got into the room?—Got into the room.

How many?—Two stood in the room, at the top of the ladder, with two small pistols, presenting them in this way, and said, "Holloa, is any body in the room? here is a pretty nest of you." The officers said, "Gentlemen, we have got a warrant to apprehend you all, and as such we hope you will go peaceably;" at this instant of time one of the officers that was behind upon the ladder, "Make way" (said he) "and let me come forward." This was the man that was murdered.

A man that was behind on the ladder, said, "Let me come forward"?—Yes.

The two officers at the head of the ladder made way to let him come in; at this instant of time there was a group that had got into a little room?—Yes.

A group that had got into the little room before the officers had come there?—After the officers had entered the room.

Was it a group of persons that had been in the room before the officers had got there, who had got into the little room?—Yes; and on this the man that was murdered came into the little room; this group in the little room came forward, and amongst the group I saw an arm rush suddenly forward, at the same time I saw a pistol.

When the officers came forward, you saw one arm advance forward, with a sword in it?—I did not perceive what weapon he had.

But you saw an arm?—Yes.

And another arm with a pistol?—Both at one time; the hand that presented the pistol was rather below the arm that presented the other weapon.

What was done with the other arm?—As soon as ever the pistol was fired, out went the candle, that it was impossible for me to see what transpired.

Did you get away then?—On this, it was

given out that one of the officers was murdered.

Did you get away?—Yes.

How?—After the officers got out and called for the soldiers to assist them, I went into the little room, to see who was there.

Did you get away?—I did.

How?—I went down the ladder and through the stable, as unquashed as if nothing had been the matter.

Did you go home?—Yes.

This was on the Wednesday night?—Yes.

How soon after were you apprehended?—On the Friday.

Have you been in custody ever since?—Yes, I have.

Look at the prisoners that are standing at the bar, and tell us their names. Who is that below?—Thistlewood.

Is that Thistlewood?—Yes.

Who is that behind him, the man of colour?—Davidson.

Who is on Davidson's left?—Wilson.

Who is that in the green coat?—Brunt.

Who is that who has moved?—Ings.

The butcher?—Yes.

Do you know the other man on the right hand of Brunt, with a coloured handkerchief?—Cooper.

Who is that short man? do you know him? [Strange.]—I cannot say that I can swear to the man, I have seen him.

Now the other man, who is that? [Bradburn.]—I do not know his name.

Now the tall man behind?—That is Harrison.

Who is that standing by him? [Gilchrist.]—I do not know him by name.

Now the other one, the stout man?—That is Tidd.

Mr. Solicitor General.—There are two or three that he has not spoken to, I wish they would stand forward.—I cannot say that I can swear to that man. [Strange.] I know his face too, but there is a difference in the dress, or something.

Do you know that man? [Bradburn.]—I have some recollection of him, but to swear to him I cannot.

Go down from the place where you are. [The witness removed.] Who is that? [Strange.]—I do not know the man by name, to say I can command his name; but I know him by sight.

Did you see that man at any of the meetings?—Yes, I think I have.

Robert Adams cross-examined by Mr. Curwood.

You went with a full intention of assassinating his majesty's ministers?—No, I did not: I deny that.

What carried you there?—My legs.

Look at the jury, will you. Your legs carried you there?—Yes.

What intention carried you there?—What intention? I certainly cannot say, but I went there under that pretension to every outward appearance.

What was your inward intent?—My inward intent was entirely against them.

Against them? which did you say, against them, or against it?—Against the plan that was pursued.

According to your own account, you had attended many meetings at which this plan was debated?—I had.

One night you were chairman, you say?—One morning.

Then if your intention was against it, how came you to join them again?—I joined upon them in this way, gentlemen of the jury; there had been threatening language several times held out by Brunt, if any man that belonged to the party concerned, withdrew himself from it, he would take care that that man should be marked out; what could I do then?

Then it was fear made you join them?—It was fear that kept me to them.

Your original friend, I think you say, was Mr. Brunt?—Yes, my original acquaintance.

And you became acquainted with him in the year 1816, at Cambray, you say?—Yes.

Were you then a soldier?—No.

You had quitted the army for some years then?—Yes.

What line of life had you been in, after you quitted the army?—Principally in my trade, as a shoemaker.

Were you ever a treasurer at a benefit fund?—Never in my life.

What carried you to France at that time?—I went with the intention to follow my trade there.

Had you no other motive for leaving England?—Any other motive?

Yes?—Not in particular.

Did you carry much money with you?—I carried some with me.

How much might it be?—Between thirty and forty pounds.

Was not it more than that?—No.

Was it all your own?—I conceived it my own.

Some persons conceived it belonged to other people?—What other persons conceived I do not know; but what belongs to me I will acknowledge to the truth of.

Were not you charged with carrying away money belonging to other people?—No.

You never were charged before a magistrate with it?—No.

You went to France to carry on your trade as a shoemaker?—Yes.

That was your sole motive?—Yes.

Having become acquainted with Brunt, what purpose did he introduce you to Mr. Thistlewood for?—For the purpose of assassinating the ministers.

That was the purpose of the first visit?—Yes, this was proposed to me by Brunt before I ever saw Thistlewood.

And that being proposed to you, you agreed to be introduced to Thistlewood for that purpose?—Yes.

And you joined every meeting where that

question was debated, till you were taken into custody?—Not every meeting.

A variety of meetings?—Yes.

And having joined for that purpose?—Yes.

And having joined for that purpose, and having heard it debated, you still continued to go to those meetings?—Yes.

You told us you were selected for your adroitness at the sword?—Yes.

Were you to be the most active at the assassinating plot?—I told you before, I was to be one to be appointed as a swordsman to go into the room along with Harrison.

How long is it since you have been an evidence to give an account of this plot?—The first account I ever gave in was on the Saturday after.

Did you give it then under any understanding that you were to become an evidence?—I did not.

It was from pure compunctious visitings of your own breast that you then disclosed it?—It was, indeed.

Not out of any regard for your neck?—The motive I did it with was this: my conscience was accused I had acted wrong, and I leant to heart; and I made a solemn vow, that if God Almighty would spare me, I would make a disclosure of all I knew.

You did not like to be hanged?—I do not know who would.

And you had rather thirteen others would be hanged than yourself?—I only came here to give the truth: if it is against the prisoner I cannot help it.

Had not you rather thirteen men should be hanged on your evidence than that you should be hung yourself? however, I will not distress you about that; but you had none of those feelings before you were in custody?—Yes, I had some prior to that.

How long before you found yourself in custody?—I had them before I entered the room; but after I entered the room, and the man was murdered, I was worse.

Before you entered the room that day?—Yes.

Were you very much shocked at it?—I were.

Because just now you told me you went down stairs and walked away as if nothing had happened?

Mr. Solicitor General.—He did not say that.

Witness.—I walked down to give myself up to the officers, but I saw none, and I did not find the officers, and I walked off.

Mr. Carwood.—You found no officers?—No.

And that is the reason you did not surrender yourself?—Certainly.

Did you think of surrendering yourself the next day, before you were taken?—I did not think of surrendering myself, or of making any escape; I made up my mind to run all chances.

To wait the event?—Yes.

You have given us a very circumstantial account; how many were the most that at any time you saw assembled?—The most that I saw assembled together were on the 20th of February, in the morning; there were about fifteen, I think; leaving the room in Cato-street out of the question.

Were any of them wealthy men that you have not named?—I know no more than I know here.

All poor men?—All poor men for what I know.

You sent one day for the paper?—Mr. Thistlewood did.

How did you raise money to pay for that paper?—I am not to tell how Mr. Thistlewood came by his money.

Was it not raised by a halfpenny and penny raised round the room?—No.

How was it raised?—Mr. Thistlewood gave the money out of his pocket, and sent Hale to fetch it.

I do not mean the cartridge paper, but the newspaper?—I mean the newspaper too.

The utmost you saw, before the meeting in Cato-street, was fifteen men?—Yes.

What was the largest sum of money you found among them?—The largest sum was six shillings, which I saw produced by Thistlewood to Brunt.

Somebody said he had a one pound note in reserve on this great occasion?—That was Mr. Brunt.

It was proposed, you say, not only to assassinate the ministers, but to take the two guns in Gray's-inn-lane, and the six guns at the Artillery ground, and to seize the Mansion-house?—Yes.

As you seem to have been deep in this, where were the forces to come from to do all this?—That I cannot tell: I speak no more than what I know.

Then you never saw any return of the men that could be brought into the field?—Never.

Where was the depot?—At Tidd's.

Was it in a corner-cupboard?—They were kept in a box under his window, the grenades; and as to the pike staves, they were put out of sight; where I do not know.

Did you see any cannon-ball anywhere?—No.

What were you to do with the cannon when you got them, do you know?—Yes; in the first place, they intended to put a cartridge into the cannon, and in the next place it was proposed to take a sledge hammer along with them, and knock off the iron railing to charge the cannon with, as it was conceived it would do greater damage than cannon ball; this was the proposition of Mr. Thistlewood.

You have not told us yet where the men were to come from?—I do not know, and what I do not know I will not answer to.

I think you named a person of the name of Edwards there continually, where is he now?—I do not know.

Have not you seen him to-day?—I have not seen Edwards since the 22nd.

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He was a very active man there generally?—I have seen him as active as the rest of them.

More active than the rest?—He seemed to be in more close communication with Harrison, Brunt, Thistlewood, and the rest of them.

You do not know where he is now?—I do not know, I never heard of him.

What newspaper was it you received the information of the dinner from?—The New Times.

Have you since learned whether it was true that there was to be a dinner there or not that day?—I have never made any inquiry, but I saw it in the paper myself.

You only know what the paper informed you?—No.

You have given a confused description of what passed in the hay-loft?—I do not know what loft it was.

It was over a stable?—Yes.

The unfortunate accident was to a man who said, "make way, let me come forward"?—Yes.

And you described an arm came forward with a sword in it?—I did not say a sword.

Were you pretty near at that time?—I was at the end of the room, under the bench, next to Cato-street.

How near was that arm to your own body?—I suppose it could not be above four or five feet off; I mean the arm that extended from the door.

Was not your own arm within sufficient reach to have done that mischief yourself?—It could not be, for I had not an instrument of any description in my hand.

Answer the question:—was not your own arm within sufficient reach to have done that mischief yourself?—I might have done it with a pistol, but not with a sword.

Then you were not sufficiently near?—I was not.

Do you recollect who put out the candle?—I do not know whether it was put out by the report of the pistol, or blown out intentionally.

You did not put it out?—I did not; at the report of the pistol the candle was out instantly.

Robert Adams re-examined by *Mr. Solicitor General*.

You were at Cambray?—Yes.

Were you carrying on your trade there?—Yes.

Were the English soldiers there?—Yes.

Were you carrying on your trade among the English soldiers and officers at the time?—Yes.

Eleanor Walker called.

Lord Chief Justice Abbott.—It is quite impossible that we can finish to-night. That must be felt on all sides.

Mr. Attorney General.—Our attention has been directed to that, my lord; but then it becomes proper to consider the most convenient

time, to break off for the night, so that we may have strength for another day.

Lord Chief Justice Abbott.—Will you conclude now?

Mr. Attorney General.—This is the most detailed examination.

Lord Chief Justice Abbott.—It is quite clear we must have a third day, and therefore we need not exhaust ourselves the first day. Is there any preparation to accommodate the gentlemen of the jury?

Mr. Sheriff Rothwell.—There is, my lord.

Lord Chief Justice Abbott.—Gentlemen of the jury, according to what we learn from the attorney-general, and the counsel for the defendant, it is impossible that you, or I, or any person concerned in this trial, should have strength to go through it without adjournment. Probably some of you have come from a distance; and as we must adjourn, probably you may think this as convenient a time as any other: proper care has been taken to provide for you.

Adjourned to to-morrow morning nine o'clock.

TUESDAY, 18th APRIL, 1820.

The Prisoner was set to the bar, the other persons indicted with him being placed behind.

Thistlewood.—My lord, will you have the goodness again to-day to indulge me with a seat?

Lord Chief Justice Abbott.—Certainly.

Davidson.—If your lordship will be pleased to let me have a seat, I was very unwell last night, with standing so long?

Lord Chief Justice Abbott.—They may place two or three chairs there, and you may relieve one another.

Eleanor Walker sworn.—Examined by *Mr. Gurney.*

Are you servant to Henry Rogers?—Yes.

Where does he live?—At No. 4, Fox-court.

Is that in Gray's-inn-lane?—Yes.

Had you a lodger in your house of the name of Brunt?—Yes.

What rooms did he occupy?—Two. One was a large one, and one a small one.

On what floor?—The second floor.

Were they front or back rooms?—Front.

Both front?—Yes.

In the month of January last was there any two-pair stairs back room to let?—No, there was not to let; there was one occupied; a back room was occupied in January.

Did the person come in in January, or when did he come in, to the best of your remembrance?—In January.

Who introduced him to you?—Mr. Brunt.

As well as you can recollect, how long be-

fore Brunt was taken up?—A month or five weeks.

Brunt you say introduced him to you?—Yes.

Did Brunt tell you what he was?—No, he did not tell me what he was; he said he was lately come from the country, and he wanted a lodging, and he knew we had one to let, and he wished us to take him in.

Did you afterwards find out the name of that person?—No, I never heard the name.

At what was the lodging taken, how much a week?—Three shillings.

Was it furnished or unfurnished?—Unfurnished.

Did the person tell you any thing about furniture?—He said, perhaps he might not bring his goods in for a week or better.

Did he ever bring any furniture in?—No, not to my knowledge.

Should you know him again? the lodger?—No, I do not think I should.

And you do not recollect hearing him, called by his name?—No, I do not.

Lord Chief Justice Abbott.—What room was it that was taken?—The two-pair back room.

Mr. Gurney.—While this person occupied the room, did you see any persons go up and down stairs?—I have never seen them. I have heard people go up and down stairs, but not seen them.

Mary Rogers sworn.—Examined by *Mr. Gurney.*

We understand you live in Fox-court?—Yes.

And that Brunt lodged with you?—Yes.

Eleanor Walker is your niece and servant?—Yes.

Do you remember the circumstance of her letting the two pair of stairs back room?—While I was absent she did.

Did you ask any question of Brunt, your lodger, who it was that had taken your room?—I did, after he had been in my house about a week.

What did he say respecting him?—I said, "Mr. Brunt, you have brought in a lodger, I understand; I hope he is a good one." He says, "I hope he is, Mrs. Rogers; I have no doubt he will always pay you." I said, "I think it is very right I should know." "I know nothing more of the man," says he, "than the seeing him at a public-house, and that he was inquiring for a lodging; knowing you had one to let, I recommended the lodging."

Did he say what he was?—I asked him what he was; he said he was a butcher out of work.

Did he ever sleep there?—Not to my knowledge.

Did he ever bring any furniture in?—Never.

How many weeks did he pay you for?—Four or five, I could not swear which.

While he was there, did you observe any persons going up and down stairs?—I did once; one evening.

Was that when you were going to put your children to bed?—I was putting my children to bed.

How many did you observe going up?—Three; the middle of the three was a black man.

Were you upon the stairs as they went up?—No, I had a little room up the one pair; and as I came from my own door, the light from my room shone on their faces.

You were on the landing-place?—I was; I saw them go up.

At other times, have you observed whether any persons were going up and down stairs?—I have early in the day seen a strange man, but taken no notice who nor what they were.

Had you, in any parts of the day, observed persons going up and down stairs?—No: being so seldom at home, I had no opportunity.

Joseph Hale sworn.—Examined by
Mr. Gurney.

Are you apprentice to Brunt?—Yes.

How long have you served of your time?—Two years the 3rd of last February.

Have you lived with him in Fox-court?—Yes.

Do you remember any person taking the back room two pair of stairs in Fox-court in January?—I remember a person coming up there, but I do not know exactly what month it was.

Who was that person?—It was a butcher.

What was his name?—Ings.

Who looked at the room with him?—Brunt.

Brunt and he looked at the room together?—Yes, they did.

After they had looked at the room, or while they were looking at it, did you hear Brunt say any thing to Ings?—When they came out of the room I heard Brunt say to Ings, "It will do, go down and give them a shilling."

Brunt said that to Ings?—Yes, he did.

After that time did Ings use to come to the room?—Yes.

Who kept the key of the room?—The key of the room was mostly left in Brunt's room.

Then when Ings wanted to go into the room, what did he do?—He used to come to Brunt's room for the key.

From that time till your master was taken up, did there use to be any number of persons coming to that room?—Yes.

Was that seldom or frequent?—Every evening.

Whom have you seen come to these meetings every evening?—Different persons.

Can you give me an enumeration of their names?—Yes.

Who were they?—Ings, Tidd, Thistlewood, Bradburn, Edwards, Hall, Potter, Strange.

Do you remember a man of the name of Adams?—Yes.

Did he come?—Yes.

Do you recollect any black man, or man of colour?—Yes.

What was his name?—Davidson.

Did he come?—Yes.

Do you remember whether there were more than those you have named?—I remember more used to come, but I do not know their names.

How long in the evening did they use generally to stay?—Nearly about two hours in general.

Was there any furniture in the room?—None that ever I saw.

What did they do for seats?—They used to take chairs in, out of Brunt's room, to sit on.

Did you hear them talking, occasionally, and speaking to each other?—No.

Did you ever hear them call Thistlewood by any name?—Yes; they used to call him sometimes *T.* and sometimes *Arthur*.

Do you remember any day seeing the door open, and observing any thing in the room?—Yes.

What did you see?—I saw some long poles.

What were they like?—They were like branches of trees.

Cut rough from the tree?—Yes.

How many do you think?—I suppose about twenty.

Did you at any time hear any work going on in the room?—Yes.

What kind of work?—I have heard hammering and sawing.

Your master was taken up on Thursday, the 24th of February, was he not?—Yes, he was.

On the Sunday morning before that (that would be the 20th) was there any meeting in that room?—In the morning.

Was that a meeting of the usual number, or a smaller, or a larger number than usual?—There were more that morning than ever I had seen come up before.

Were the persons whom you have named to me all there?—Yes.

After the meeting had broken up, did you see any person in your master's room with him?—In my master's own room there was one.

Who was that?—Strange.

He had been at the meeting you have told me?—Yes, he was.

Was there any meeting on the Monday evening?—Yes.

On the Tuesday evening was there any meeting?—Yes.

On the Wednesday, do you remember any number of persons coming?—There were several persons in and out in the course of the day.

Did any of them come into your work-shop?—Yes.

That was one of the front rooms?—Yes.

Did they do any thing there?—Yes.

What?—They had got some pistols, and were putting new flints into them.

How many pistols do you think you saw?—Five or six.

Did they finish flinting the pistols there?—No.

What stopped them?—One of the men said that there were people overlooking them, and Brunt told them to go into the back room.

Overlooking them from the opposite house ?
—Yes.

Who were the persons who were so putting in the flints ?—Strange, and a man whom I did not know.

Did they then go into the back room ?—Yes.

In the course of that afternoon, how many persons do you remember seeing in that back room, or going in and out of it ?—I cannot say, but I saw several in the course of that day.

Did you see Thistlewood there ?—Yes.

Lord Chief Justice Abbott.—On the Wednesday ?—Yes.

Mr. Gurney.—In the course of the afternoon, did he ask you for any thing ?—Yes.

What did he ask you for ?—A piece of writing paper.

Did you give him a sheet of writing paper ?
—Yes, I did.

To what place did he take it ?—I believe into the back room.

Lord Chief Justice Abbott.—You gave it him in your master's room ?—Yes.

Mr. Gurney.—After that, did any person come out of the back room and give you any order to fetch any thing ?—Yes.

Who was that ?—My master, Brunt.

What did he desire you to get ?—Six sheets of cartridge paper.

What money did he give you ?—Sixpence.

Did you go and buy it ?—Yes.

To whom did you give it ?—My master.

Where did he take it to ?—He took it into the back room.

About what time, as well as you remember, in the afternoon was that ?—Between four and five.

At about what time did the persons who were in that back-room go away ?—The last that went away, about eight in the evening.

Did any of them go away about five or six ?
—I believe they did : I heard people go down stairs.

You were in your work-shop ?—Yes.

Did your master go out ?—He was in and out several times in the course of the day.

What time did he go away finally ?—About six.

Lord Chief Justice Abbott.—You did not see him after six ?—No.

Mr. Gurney.—He went away, as you thought, about six ?—Yes.

Was he alone, or was there any person with him ?—There was a man with him.

Do you know that man ?—I do not know whether I should know that man again.

Was that one of the men you had been used to see there ?—No.

Had any table from your mistress's room been taken into the back-room ?—Yes.

On that day ?—Yes.

When your mistress was going to drink tea, did you want that table ?—Yes.

What did you do to get it ?—I went to the back room for it.

Did you go in, or knock at the door ?—I knocked at the door.

Who opened it ?—A man by the name of Potter.

Did you ask for the table ? and did he give it you ?—Yes.

Lord Chief Justice Abbott.—You did not go in ?—No.

Mr. Gurney.—By the opening of the door, were you enabled to see whether there were any persons in the room besides Potter ?—Yes.

How many do you think there were ?—About four or five.

After your master was gone, did you see Tidd ?—Yes.

At about what time ?—Between seven and eight, nearly eight.

Into which room did he come ?—Mrs. Brunt called him, and he came into her room.

What did she then do ?—She took him to the cupboard, and shewed him a pike head and a sword.

This was in your master's room ?—Yes.

What passed about them ?—Mrs. Brunt asked him what she could do with them.

What did he do with them ?—Mrs. Brunt gave them to him, and he took them out of the room, I believe, into the back-room.

After that time, did you hear any persons go down stairs ?—Yes.

Did any person come into Mrs. Brunt's room ?—Yes.

Did he leave any message ?—Yes.

What was it ?—He said, if any person came up after any one, he was to be sent to the White Hart.

Mr. Justice Richardson.—Whose direction was that ?

Mr. Gurney.—He does not know the person, my lord. Did any persons come shortly after, and inquire for your master ?—Yes.

Were they sent to the White Hart ?—Yes.

Did you go and show them the way ?—Yes.

Did any person come whose name you have mentioned ?—In the course of the evening.

Did Potter come ?—Yes.

Did you send him to the White Hart ?—Yes.

Did you go and show him the way ?—No, he knew the way.

How many were those you had gone to show to the White Hart ?—Three.

Was Potter alone, or were there any persons with Potter ?—There were some persons with him.

Did your master come home that night ?—Yes.

At about what time ?—At about nine o'clock.

Did you observe any difference in his dress from what it was when he went out ?—It was dirtier.

Did he appear composed or otherwise ?—No.

In what state did he appear to be ?—He seemed confused.

Did you hear him say anything to his wife of what had happened?—I heard him say to his wife it was all up, or words to that effect.

What else did he say?—He said that where he had been a great many officers had come in. Any thing else?—Just as he spoke these words a man came in.

Did he say any thing about himself before the man came in?—He said he had saved his life, and that was all.

You say, just as he had said that, another man came in?—Yes.

Do you know the name of that man?—No.

What did Brunt say to him upon his coming in?—He shook hands with him, and asked him, when he came in, if he knew who had informed.

What answer did the man give?—He said, "No."

Did the man say whether any thing had happened to him?—Yes; he said he had a dreadful blow on the side, and was knocked down.

Did Brunt say any thing more?—Yes.

What did he say?—He said, "there is something to be done yet."

After that, what did he and the other man do?—They went away together.

After they were gone, did you and Mrs. Brunt do any thing?—Yes.

What did you do?—We went into Ings's room.

Lord Chief Justice Abbott.—That was the back room?

Mr. Gwary.—What did you see there?—I saw several things in the cupboard.

Were the twenty poles there which you had before seen?—Only one.

In the cupboard you saw what?—I saw several rolls of brown paper with tar in them.

Any paper twisted up?—Yes.

What paper was that?—A piece of cartridge paper.

Did you see any thing with strings?—Yes.

How were the strings?—They were rolled round them.

How large were they?—About as big as two fists.

What do you understand them to be?—I have heard since they are hand-grenades.

Did you see any iron pot?—Yes.

Had you seen that before?—Yes.

Who had it?—Brunt had it.

Had he had it long, or was it a new purchase?—He had had it some time.

Weeks or months?—Some time before, I cannot say how long; he used to use it himself in his own room.

At about what time did your master come home again?—On the Wednesday evening about eleven o'clock.

Did he give you any directions before he went to bed?—Yes.

What?—He told me to get up in the morning as soon as I could, and to clean his boots.

In what condition were they?—They were very dirty.

The next morning did you get up early?—He called me about half past six.

What did he say to you?—He asked me if I knew the Borough. I told him, yes.

Did he ask you as to any particular part of the Borough?—He asked me if I knew Snow's-fields, I told him no.

After this, did he and you go into the back room?—Yes.

What directions did he give you?—He told me to bring a basket in out of his room and put in the things out of the cupboard.

Did you and he put any things into the basket?—Yes.

Was there one basket or two?—Two baskets.

Were the things out of the cupboard put into those baskets?—Yes, they were.

Did he tell you who lived at Snow's-fields that they were going to?—Yes.

Who?—Petter.

After the things were put into the baskets, were either of the baskets put into any thing else?—One of them was.

What was that?—One of them was tied in a blue apron.

They were rush baskets?—Yes.

Whose blue apron was that?—Mrs. Brunt's.

What use had been made of that blue apron before?—It had been put up as a curtain in Ings's room.

Was the other basket tied in any thing?—No.

Did any thing happen directly after this?—Yes.

What?—We went into Brunt's room to look for something to tie the other basket in, and two officers came up.

Did they take your master into custody?—Yes.

Did they search the room and take the baskets?—Yes.

Among the persons you have spoken of, where did Tidd live?—In the Hole-in-the-wall-passage, Brook's-market.

Where did Adams live?—Next door to Tidd.

You have been at the lodgings of both?—Yes.

Joseph Hale cross-examined by Mr. Adolphus.

Brunt was your master?—Yes.

Was he a master shoe-maker or a journeyman?—A journeyman.

In very poor circumstances?—No.

Had he any journeymen with him or under him?—No.

You and he did all the work he had to do?—Yes.

What was Tidd?—A shoe-maker.

Living very near you?—Yes.

How many children had your master?—One.

Had Tidd a wife and children?—He had a wife; I believe he had children.

Was he a poor man?—I do not know.

What was Mr. Adams?—A shoe-maker.

He was a shoe-maker too?—Yes, he was.

You have mentioned those meetings that took place from night to night; how many nights do you think they came there?—I cannot say how many nights.

I do not mean that you should be upon your oath to the number, but how many, as nearly as you can state confidently?—He had come nearly five weeks.

Ings had the lodgings nearly five weeks?—Yes.

Do you mean that there were meetings every night during that time?—I believe there were.

What number were there?—I cannot say, but the most I ever knew of were the Sunday morning.

That was not the time you went in?—No.

How many were there then?—I cannot say how many exactly, I think there were about twenty.

You think there were as many as that?—Yes.

Did you see them as they went up or together?—I saw them as they went up.

Did you know any of the other persons you have named, who, and in what situations they were?—Yes, I knew some of them.

Who were they?—Strange.

What was he?—He was in a boot-maker's shop.

Making or selling?—Selling in the shop.

What were the others?—I do not know any of the rest.

You have talked of one Mr. Edwards, was he there pretty often?—Yes, he was very often.

What was he?—I believe, an artist.

What do you mean by an artist?—Makes figures.

What, in the Crown's description is called a modeller?—Yes.

Do you know any thing more of him?—No.

He was there pretty constantly?—Yes.

Was he or Adams there the oftenest?—Edwards was there the oftenest.

How often do you think Adams was there, to your knowledge, in the whole?—I cannot say how often; he used very often to come upon business.

But to that room of Ings's?—I cannot say how often.

Edwards was there daily almost, I suppose?—He used to come almost every day.

What was Hall, do you know?—A tailor. I believe.

Where did he live?—I do not know.

A journeyman?—I believe he was.

All persons of like rank in life?—Yes.

How many persons do you think were there at any one time on the Wednesday?—I cannot say.

You spoke of nine being there, do you know of more being there at one time?—Not that I know of.

Were the rush baskets you have spoken of common rush baskets, such as people take to buy little things in and bring them back?—Yes.

And the whole materials you found there were packed into those rush baskets?—Yes.

Did they fill them, or did they lap over?—They filled them.

Lord Chief Justice Abbott.—They intend to produce them I understand.

Mr. Adolphus.—Yes, so I understand, my lord. However these two rush baskets contained them all, and one of them was covered with a lady's apron?—Yes.

You spoke of twenty branches of trees, are you sure you saw as many as twenty? We say currently twenty, might not there be only ten, or a dozen, or fifteen?—There were as nearly as I can guess about twenty.

You say they were branches of trees in a green raw state?—Yes.

You do not know how they came there; you did not see them brought in?—No.

There was only one left on the morning of the Wednesday?—No.

Did they keep a fire in the room?—I believe they did.

We know what a winter we have had; you went one evening to get out the table, was there a fire there then?—Yes.

There was a pot which had been used there?—Yes.

Whether those poles were used to light the fire or not, you cannot tell; but there was one left?—Yes, there was.

Thomas Smart sworn.

Mr. Adolphus.—That is your only name, is it?—Yes.

Mr. Adolphus.—He was called first by the name of John by my learned friend.

Lord Chief Justice Abbott.—Your question is very natural after that certainly.

Thomas Smart examined by Mr. Littledale.

You are watchman in the parish of Saint George, Hanover-square?—Yes.

Do you recollect being on the watch on the 22nd of February last?—Yes.

Where do you watch?—On the south side of Grosvenor-square; my box nearly faces lord Harrowby's.

At what time in the evening did you go on your watch?—We go on at eight o'clock at that time of the year.

Do you recollect, soon after you went on the watch, any thing particular attracting your attention?—I saw four very suspicious men walking about the square; I thought they were after no good; two tall and two short, one was a black man or almost black.

What time was that?—Half-past eight; after I had called half-past eight; I thought they were very suspicious characters, and I looked at them.

Should you know them again?—I think I should not.

Did you watch them?—I did take particular notice of them; they walked very upright,

and carried a stick; they were looking down the areas, and taking notice of the areas.

Was Charles Bissix a watchman on the watch?—Bissix is a watchman at the other corner; we join every half hour at the corner of South Audley-street.

Thomas Smart cross-examined by
Mr. Curwood.

It is no uncommon thing for you, as a watchman, to see people whom you think suspicious?—Very common.

Henry Gillan sworn.—Examined by
Mr. Bolland.

Where do you live?—At 15, Mount-street, Grosvenor-square.

What are you?—Servant to Mr. Whittle, apothecary.

Do you ever use the Rising Sun public-house, in Charles-street?—Yes.

Where is Charles-street?—It runs into Grosvenor-square, and into Mount-street.

Is it in the street, or at the corner of the street?—At the corner of the Mews.

Do you remember being there on Tuesday night?—Yes.

What night was that?—The 22nd of February.

Did you see either of the prisoners there?—Yes, that short man with a brown coat on.

Mr. Bolland.—That is Brunt, my lord. Was he alone, or in company with any other person?—There was a tall man along with him.

Did they take any refreshment?—Yes, some bread and cheese, and some porter.

Did you play with them at any game?—Yes, the dominos lay on the table, and that man challenged me to play a game at dominos with him.

Did you play with him?—Yes, two games I played with him.

Did you leave the house first or they?—I did.

What time did you go away?—A little before ten.

Leaving them there?—Yes.

John Hector Morison sworn.—Examined by
Mr. Attorney General.

I believe you are a journeyman cutler to Mr. Underwood, in Drury-lane?

Lord Chief Justice Abbott.—Is it in Drury-lane, or in some court there?—In Drury-lane.

Mr. Attorney General.—Do you remember at any time about Christmas last, any man bringing you a sword?—Yes, on Christmas-eve.

He brought that to your master's shop?—Yes, he did; I was in the shop.

What was the man's appearance?—He was habited like a butcher.

For what purpose did he bring this sword into your master's shop?—He inquired of me

if I ground swords, I said yes; he produced one from underneath his smock frock, without a scabbard.

Having produced it, did he leave it with you for the purpose of being ground?—Yes, he left it for the purpose of being ground and set, particularly at the point.

Did you ask him, or did he give you his name, at that time?—It is customary for us to ask the name of the person who leaves an article, and he said, put the name of Eames, as I understood, but I am rather hard of hearing, and it might be the name of Ings.

Did you grind it?—Yes.

Did he call for it again?—Yes, in about three days.

Did you see that person again?—He called about a fortnight after, with another sword.

What sort of a sword was that?—A very long one, much longer than the other, a sort of cavalry sword.

What did he bring that for?—He said, he wanted that ground in the same manner as the last. I did not inquire his name at that time, knowing him again.

Was that ground for him?—Yes.

Should you know that man again?—Yes.

Look and see whether he is there?—Yes, he is the person at the bar behind the first one, at the left hand side [pointing out Ings].

Do you think you should know the swords again?—Yes; there is only one I have seen, that is the same.

Mr. Attorney General.—By and by, my lord, we will shew it to the witness; we will not interrupt the case now. Was that shewn you by one of the Bow-street officers?—Yes; that was the one left at Christmas.

Edward Simpson sworn.—Examined by
Mr. Attorney General.

Are you corporal major of the second regiment of Life-guards?—Yes.

Do you know a person of the name of Harrison?—Yes.

Was he in that regiment?—Yes, he was.

Is Harrison at the bar?—Yes, John Harrison [pointing him out].

When was he discharged from the life-guards?—In 1815, I believe.

Was it in 1815, or later?—In 1814, I believe.

That is six years ago?—Yes.

At that time he was in the regiment, was he in the King-street-barracks with you?—Yes, he was.

By being there, had he the opportunity of knowing the barracks?—Yes.

I believe one side of the barracks looks into Gloucester-mews, or did?—There were windows on that side.

Was there a window next Gloucester-mews from any loft of the barracks?—Yes, there were five windows.

In those lofts what was kept?—Hay and straw.

Lord Chief Justice Abbott.—Were all those five windows in the loft, or only one of them?—Five windows in the loft.

Mr. Attorney General.—At the time Harrison was in the barracks, have you ever seen him in those lofts?—Yes, frequently.

You say the windows are now stopped up; when were they stopped up?—It was some days after the affair happened at Cato-street.

At the time of the affair in Cato-street those windows were in the loft?—Yes.

Edward Simpson cross-examined by Mr. Curwood.

How many men are there in the barracks in King-street?—It is not a barrack for men, it is for horses only.

How many men are there in the barracks at Kensington?—I really cannot say the number.

I thought you might know as a soldier?—Nearly 300 I should suppose.

How many foot guards are there usually in town?—That I do not know.

Are there a thousand?—upon my word I cannot say.

You may know pretty nearly the number?—To say that exactly I cannot.

Do you know any thing of a man of the name of Adams?—No, I do not.

There are usually 300 men in the Knights-bridge barracks, you say?—Yes, I should think about that.

James Aldous sworn.—Examined by Mr. Attorney General.

You are a pawnbroker in Berwick-street?—Yes.

Do you know the prisoner Davidson, the black man?—Yes.

Do you know him from his having pledged things at your shop?—Yes.

Do you remember, on the 23rd of February last, his coming to your shop to take any thing out of pledge?—I do.

What was it that he wanted then out of pledge?—A blunderbuss.

Did he have it out?—Yes, he did.

Was that in the forenoon?—In the morning.

What kind of a blunderbuss was it?—Brass-barrelled.

Was it a large blunderbuss or a small one?—About this length (eighteen or twenty inches).

Thomas Hiden sworn.—Examined by Mr. Gurney.

Are you a cow keeper?—I am not now.

Were you a cow keeper?—I have been.

Mr. Adolphus.—How do you spell your name?—H, i, d, e, n.

What were you in February last?—I sold milk. I kept a cow at that time.

Mr. Gurney.—Were you formerly a member of a shoe-maker's club?—I was.

At that club, have you met a man of the name of Wilson?—I have,

Mr. Gurney.—Let Wilson stand forward (Wilson stood forward.) A few days before the 23d of February last, did you see Wilson?—Yes, I did.

Do you mean Wilson the man at the bar?—I do.

Did he make any proposition to you?—He did.

What was that proposition?—He met me in the street as I was walking, and asked me if I would be one of a party to come forward to destroy his majesty's ministers.

Did he say where they were to be destroyed?—He did not: he said at a cabinet dinner; that they were waiting for a cabinet dinner, and all things were ready.

Did he say what sort of things they had got ready?—He said, they had some such things as I never saw, which he called by the name of hand-grenades.

What more did he say?—He said they depended upon me to be made one.

Did he mention the name of any of his associates?—He said Mr. Thistlewood would be glad to see me, if I would make one.

Did he say what use was to be made of the hand-grenades?—He told me they were obliged to be lit with fuses, and to be put in under the table.

What then?—And all that escaped the explosion was to die by the edge of the sword, or some other weapon.

Did he say any thing about fires?—He said they meant to light up some fires, and by so doing it would keep the town in a state of confusion for some days, and it would become a general thing.

Did he explain what he meant by lighting fires? What was to be fired?—He nominated some houses.

What places do you remember that he mentioned?—I remember lord Harrowby's to be one; lord Castlereagh's another; the duke of Wellington's—

Mr. Curwood.—Do you mean houses or persons?—I mean houses.

Mr. Gurney.—Were there any other buildings mentioned?—Lord Sidmouth's, and the bishop of London's, and some other that I do not remember. I heard those mentioned.

Do you remember any other buildings that he mentioned?—I do not.

Did you acquiesce, or what did you do?—I told him I should make one.

How many days, to the best of your recollection, was this before the discovery at Cato-street?—I believe four or five days before.

Before that, did you go to lord Harrowby's?—Yes, I did.

On what day did you go?—I am not quite certain.

Was that before the day on which the discovery was made at Cato-street?—It was.

Did you follow his lordship to the park?—I did.

Did you give him any information of what

had been communicated to you?—I gave him a note with information.

On Wednesday the 23rd did you see Wilson again?—I did.

At about what time of the day?—I believe it was between four and five o'clock in the afternoon.

Where did you meet with him?—In Manchester-street, as I was going home.

By Manchester-square?—Yes.

You were going with some milk?—No, I was going home with one of my little girls in my hand.

What did he say?—He called me by the name of Hiden, and said I was the very man he wanted to see. I asked him what there was going to be, and he said there was going to be a cabinet dinner that night at lord Harrowby's, in Grosvenor-square.

Did he tell you where you were to come to?—I asked him where I was to meet them, and he told me I was to go up to Cato-street, to the public-house by the sign of the Horse and Groom, and there I was to go in; it is the corner of Cato-street; or otherwise I was to stop at the corner, till I was shoved into a stable close by.

Did you make any inquiries of him, as to their numbers?—I asked him what time I should meet them, and he said by a quarter before six, or six, I was to be there.

Did you ask him as to how many there were in it?—I asked him how many there were to be there, and he said about twenty or thirty.

Did he tell you whether there were to be any others in other places?—I asked him whether there were going to be any others in other places, and he said there was to be another party in the Borough, another in Gray's-inn-lane, one in Gee's-court, or otherwise in the city, I cannot be certain which.

Did he say any thing about Gee's-court, particularly?—He said that all Gee's-court were in it, but they would not act unless the English were in it.

What did he say about Gee's-court?—He said they were all in it, but would not act unless the English began it, for they had been deceived so often.

Did he inform you what people live in Gee's-court?—I understood they were Irish.

Lord Chief Justice Abbott.—Do you know where Gee's-court is?—Yes, it goes out of Oxford-street, one end of it goes into Oxford-street and another end of it into Edward-street, or some street there: I know the part perfectly well.

Mr. Gurney.—Is it near the market?—Opposite St. George's market, the other side.

What did he say?—He told me not to be long; he said to me the first time, there was a gentleman's servant who had been supporting some of the party with some quantity of money; and if they would act upon the subject, he would give them a good deal more.

Did he mention any thing about any arms,

any fire arms?—He said they had some arms; he asked me whether I had got a gun; I said yes, I had, but it was a rubbishing one.

Did he say any thing more about it?—I told him the lock of my gun was at the gunmakers to repair; he said they would provide me with a gun and something to work it with.

Did he tell you any thing about cannon?—He said there were two pieces of cannon in Gray's-inn-lane, that they could get at very easily, by breaking in some small doors.

Did he mention any place in the city, at which they were to meet in the course of the night?—He said there were four pieces of cannon at some artillery ground, which they could easily get by killing a centinel.

After getting them, did he say where they should go to?—He said, that after doing the grand thing in Grosvenor-square, they were to retreat and meet somewhere in the neighbourhood of the Mansion-house.

Did you and he then part?—He told me, I was to be sure to come to my time, or else if I was late, the grand thing would be done before I came.

Did you go to John-street that evening?—I did.

At what time?—I think nearly seven o'clock. I believe the entrance to Cato-street from John-street is under a little gateway at the corner of the Horse and Groom?—It is; the Horse and Groom is the corner house that joins Cato-street and John-street.

When you got to this gateway whom did you see?—I saw Wilson and Davidson.

By Davidson do you mean the black man?—The man of colour.

Is that the man at the bar?—It is.

You had seen him before, I believe?—Repeatedly.

Did Davidson speak to you?—He did.

What did he do?—He said, I was behind my time; I said yes, we served a family with milk, and I was obligated to go there first.

Did he ask you to do any thing?—He asked me if I would go in; I said I could not go in, for I was going for some cream; he said if I would go in Mr. Thistlewood was there.

You say you had known him before?—Yes, I had.

Had he ever mentioned Thistlewood's name to you before?—He had, several times, as he had called upon me, and I had seen him with two or three more friends.

You say Davidson asked you to go in, and you said you had something else to do; did he mention any thing about time?—I told him I must go and get the cream, and he told me I must take care to come to my time, if I could. I asked him what time they should leave there; he said about eight o'clock.

Did he tell you what to do if you should come after your time?—He told me if I was not there at the time they left Cato-street, I was to follow them down to Grosvenor-square, and the fourth house from the corner of Grosvenor-square there I should find them.

Did he mention on which side of the square?
—The bottom part of the square, the further side of the square, the bottom side next Charles-street.

Thomas Hiden cross-examined by *Mr. Adolphus*.

How many days before the 23rd of February was it that you first saw Wilson?—I saw him a long time before; seven or eight months.

How long before that had you this first conversation with him?—Four or five days.

Was that before the Sunday preceding that Wednesday on which this happened?—I am not certain of that.

Was that on the Sunday?—I cannot say; I am not certain; it was four or five days before.

Nothing depends upon it more than your endeavouring to fix the time; do you think it was before or after that?—I am not able to think; I am not certain.

You saw nothing further of him before the Sunday? You never conversed with him again till the 23rd?—No.

You never went by his invitation, nor saw any other person?—No, I did not.

You went very properly, very commendably, and gave information, such as you had, at lord Harrowby's house?—I did.

You did not see his lordship there, but followed his lordship, and communicated it to him?—Yes.

What day was that?—I am not able to say.

The 23rd was Wednesday; was it the Saturday, Sunday, or Monday, or Tuesday?—I do not know what day it was; I cannot state that exactly.

How long before you saw Wilson again in Manchester-street, Manchester-square, had you been at lord Harrowby's?—I had been at his lordship's house after the time that I saw him and had the conversation; between the time I saw him first, and the day I saw him in Manchester-street.

How many days before?—A day or two.

It might be as early as the Monday?—It might be a day or two before, but I cannot speak precisely to that.

All his communication was made to you, as you stood in the street?—The last communication was, as we walked up and down Manchester-street, and towards the barracks in King-street.

How long might you be occupied in that conversation?—Probably from half an hour to three quarters of an hour.

Between four and five o'clock were you out with your milk?—No, I was not.

Afterwards, when you got to Cato-street, you told them you must go and get cream, find it where you could; and they let you go?—Yes.

And you went?—Yes.

Mr. Gurney.—Will your lordship permit me to ask a question? Is that the letter you gave to lord Harrowby? [*showing it to the witness.*]
—Yes, it is.

It is addressed to lord Castlereagh?—Yes.

Mr. Adolphus.—How came you to direct your attention to lord Harrowby?—I could not see lord Castlereagh.

You had called?—I had not called, but had walked before the house.

And not seeing him, you went to lord Harrowby's?—Yes.

Foreman of the Jury.—Is that your own hand-writing?—Yes, it is.

Mr. Adolphus.—You have used the phrase his majesty's ministers: was that the phrase that was used by Wilson and you in conversation?—It was, to destroy his majesty's ministers.

That was the very word that was used?—Yes.

The Earl of Harrowby sworn.—Examined by *Mr. Attorney General*.

I believe your lordship resides in Grosvenor-square?—Yes.

On the South side near Charles-street?—A few doors from Charles-street, next door to the Archbishop of York.

I believe you are a privy councillor, and one of his majesty's ministers?—I am.

Your lordship is President of the Council, and one of the cabinet?—I am.

Do you remember in the month of February last intending to give a cabinet dinner?—Yes.

On what day was that dinner intended to have been given?—I think it was on Wednesday, the 23rd of February.

By a cabinet dinner, it is meant that the cabinet ministers alone meet at dinner?—At the cabinet dinners no persons but those who compose what is called the cabinet are invited, consisting of the principal officers.

Does your lordship recollect how many days before the 23rd of February, the cards of invitation were issued to the different ministers?—My servant may be able to speak to that more correctly than I can. I believe the invitations went out the latter end of the preceding week.

Will your lordship be good enough to enumerate the names of those noblemen and gentlemen who composed the cabinet, and who were invited upon that occasion?—My lord chancellor, the earl of Liverpool first lord of the Treasury, Mr. Vansittart chancellor of the Exchequer, the earl Bathurst, lord Sidmouth, lord Castlereagh.

Lord Chief Justice Abbott.—What office does earl Bathurst hold?—Secretary of State for the Colonial Department; lord Castlereagh secretary of state for the Foreign Department, lord Sidmouth secretary of state for the Home Department, the earl of Westmoreland lord Privy Seal, lord Melville first lord of the Admiralty, the duke of Wellington master general of the Ordnance, Mr. Canning first commissioner of the India Board, Mr. Robinson president of the Board of Trade, Mr. Bathurst chancellor of the duchy of Lancaster, Mr. Wellesley Pole, master of the Mint, and the earl of Mulgrave.

Mr. Attorney General.—I would ask your lordship whether all those noblemen and gentlemen you have enumerated are privy councillors?—They are.

Are they employed by his majesty in the administration of the government?—They are employed in the different offices I have enumerated, and also from what is called the cabinet council.

Are they called his majesty's ministers?—In common parlance they are.

Do you remember, my lord, any day preceding that dinner, your lordship riding towards the park?—On the Tuesday.

The dinner being intended for the Wednesday?—Yes; on the Tuesday preceding that, I was riding in the park, without a servant; I think it might be before two o'clock; I was afterwards going to a council to be held at Carlton-palace.

Relate what occurred?—As I came near Grosvenor-gate, a person came up to me, and asked me if I was lord Harrowby; I said I was; he then told me that he wished much that a letter should be communicated to lord Castlereagh, which was of considerable importance, both to his lordship and to myself; that he was himself afraid of appearing—

Mr. Adolphus.—I beg your lordship's pardon, I apprehend this is not evidence.

Mr. Attorney General.—Did he give your lordship a letter upon that occasion?—He did.

Is that the letter? [*handing it to his lordship.*]—This is the letter he delivered to me, I have no doubt of it.

Did you afterwards give that letter to my lord Castlereagh, or send it to him?—When I came to Carlton-palace, I found lord Castlereagh was not there, and I forwarded it to him.

The man left you?—After some further conversation I asked the man, who had expressed his wish to have some further conversation with me, whether he had put his name and address to that letter; he told me he had not; I then said,

Did he in fact give you a card with his address?—He did.

Lord Chief Justice Abbott.—Do you produce the card?—I had the card; I am not certain that I have it now; yes, this is it, [*producing it.*]

Mr. Attorney General.—Your lordship saw the last witness before he retired?—Yes, that was the man, his name was Hiden.

Did your lordship afterwards see that man again?—Yes, I did.

When did you see him again?—I saw him again, by appointment, on Wednesday morning, among the young plantations in the ring in Hyde-park.

I must not ask your lordship what conversation took place between you and him upon that occasion, but I would ask whether the dinner really took place at your lordship's house on the Wednesday?—The dinner did not take place.

That is, the noblemen and gentlemen did not come to your house to dinner; but were the preparations postponed, or did they go on the same as if the dinner was to take place?—

All the preparations went on as if the dinner was to take place, until I wrote a note from the earl of Liverpool's to my head servant, to say that they would not dine there.

At what hour was that?—I think between seven and eight; but my servant can speak to that better than I can.

Then the preparations went on till that time?—Yes, I should imagine till nearly eight o'clock; till that note was received.

At about what hour would the party have assembled if the dinner had taken place?—Between seven and half past seven.

The Earl of Harrowby cross-examined by Mr. Curwood.

Will your lordship permit me to ask whether you had any knowledge of the matter previous to that communicated by that witness?—A previous general knowledge.

I believe there was a man of the name of Edwards had given information; does your lordship know a man of the name of Edwards?—No, I do not.

Your lordship had never seen him?—No, never.

How long previous to that had your lordship known of this?—I cannot say precisely.

A fortnight or a month?—I hardly know to what the question points: if you refer to a general knowledge of some plan being intended, we had had for some time reason to suspect such an intention, the precise period I cannot fix.

I do not ask to precise period, but as nearly as your lordship can fix it; a fortnight, or three weeks or a month?—I should say longer,

Two months?—I cannot say whether two months, but for some time we had had reason to suspect that some intention of a similar nature existed.

John Baker sworn.—Examined by Mr. Attorney General.

I believe you are butler to lord Harrowby?—I am.

Do you remember a cabinet dinner being intended to be had at his house in the month of February last?—Yes.

On the 23rd I believe?—It was.

Do you know whether, in consequence of the late king's death, those dinners had been suspended for some time?—Yes, they had.

Do you recollect how long before the 23rd of February cards had been issued for the ministers?—Either the 18th or the 19th, I am not quite certain which; I think Saturday the 19th.

On the Wednesday when the dinner was to be had, were the preparations made for the dinner as usual?—Yes.

At what time did you first receive intimation that his majesty's ministers would not

dine there that day?—About eight, or it might be ten minutes after eight.

Who lives next to lord Harrowby? does the Archbishop of York?—The Archbishop of York on one side.

Do you know whether his grace had a dinner that day? did you observe carriages there?—I observed carriages there.

About what hour?—About six or seven o'clock.

John Monument sworn.—Examined by Mr. Solicitor General.

What are you by trade?—A shoe-maker.

Where have you lately lived?—In Garden-court, Baldwin's-gardens.

Is that near Brook's-market?—It is.

You are now, I believe, a prisoner in the Tower?—Yes.

Do you know the prisoner at the bar, Thistlewood?—Yes.

Do you remember meeting him at a person's of the name of Ford?—Yes.

How long is that ago?—It was a few days before the meeting in Finsbury-market.

Tell me, as nearly as you can tell, how far back?—From this time?

How long back before the 23rd of February?

Mr. Adolphus.—I have no objection to your giving the date of the Finsbury-meeting.

Mr. Solicitor General.—I do not know it.

Witness.—It might be about two months before the 23rd of February.

Did you see him again after that?—Yes, he called in about a fortnight or three weeks after that meeting.

Did he call alone, or was any person along with him?—The prisoner Brunt was along with him.

Tell us what Thistlewood said to you, when he called at your lodgings?—He said directly he came in (he had not been there above a minute or two) that he wished to speak to me privately, and I went outside the door with him; I am not certain that he used the word privately, but he wished to speak to me.

Was any other person in the room?—My brother and my mother.

Did you, in consequence of that intimation from Thistlewood, go out of the room with him?—Yes.

Did Brunt go with you or stay behind?—He staid behind.

Tell us what Thistlewood told you when you were out of the room.—Yes, as nearly as I can recollect. I think the first words he made use of were, "Great events are at hand, the people are every where anxious for a change." He said, he had been promised support by a great many men who had deceived him, but now he had got men who would stand by him; he then asked me whether I had any arms; I said no, I had not; he said every one ought to be armed now; he said all of them had got every one something; some had got a sabre, some had got a pike, and some a pistol.

Who were all of them?—I understood those men that belonged to him.

Those men to whom he had before alluded as standing by him?—Yes; he said I might buy a pistol for four or five shillings; I told him I had no money to buy pistols; I was too poor to do any thing of the kind; he then said he would see what could be done.

Was that all that passed with him at that interview?—Yes, all that I recollect.

Did Brunt call upon you again after that?—Yes.

How soon afterwards?—I suppose two or three days.

Did any thing material pass in conversation between you and Brunt at the time he so called the second time?—I do not recollect that there was; he said he was rather in a hurry; he had got several more people in our trade to call upon, and he had got two or three men waiting for him down stairs.

Do you remember Brunt calling upon you on Tuesday, the 22nd of February?—Yes, I do.

Was that the first time he had called after the last interview with him, to which you have just spoken?—Yes, I am pretty sure it was.

You do not recollect any previous call?—No, it was a long while between the two.

Was he alone, or accompanied by any person?—He was accompanied by the prisoner Tidd.

What conversation passed between you and Brunt at that meeting? Was any thing said why he had not called?—Yes, that was the first thing—I said I thought I had lost him, and asked him the reason that he staid away so long; and he said, the reason was, that the king's death had made an alteration in their plans necessary; then I asked him what plans they were; he said that I should know at the meeting that was to be the night after, better than he could tell me.

This was on the Tuesday?—Yes.

Did he say any thing as to where that meeting was to be?—Yes; I asked him where, he said Tyburn-turnpike.

Did he tell you any thing about what was to be said or done at Tyburn-turnpike?—No; I asked him how I was to know, by seeing the people about, who they were; and he turned round to Tidd, and asked him whether he should tell me the word.

What answer did Tidd make?—Yes, he said he supposed there was no danger.

Upon that what did Brunt say?—He said if I saw any people about, I was to go to them and say, *b, u, t*, and if they were friends they would answer *t, o, n*.

Did you agree to go?—He did not ask me positively whether I would go.

Was any thing more said at that meeting?—No; he said he should call on the following morning, and tell me more particulars.

Did they then leave you?—Yes.

The next day did Brunt call again?—Yes.

That was the Wednesday?—Yes.

At what time?—Between four and five o'clock in the afternoon.

Was he alone?—Yes.

Tell us what he said to you when he called on you alone?—He called me down stairs, and asked me whether I was ready to go with him; I said no, I had got some work to finish, that must be done before I could go.

When he called you down stairs, was any body in the room out of which he called you?—Yes, my brother.

When you said you were not ready, what did he say?—He said I ought to go with him; I told him that I could not go till the work was done; he asked me how long that would be; I told him not before six o'clock.

Upon your telling him that, what did he desire you to do?—He told me he could not wait for me, but I must go to the person whom he brought with him the day before, whose name he said was Tidd, he told me where he lived in the Hole-in-the-wall passage, Brook's Market.

Did he at that time tell you any thing more as to the plan?—No, nothing.

Did he go away upon having told you this?—Yes; after telling me not to be a minute after six o'clock when I went to Tidd's, for that Tidd had got some more men that he was to take with him to the meeting.

In consequence of this did you go to Tidd's house in the course of that afternoon?—In the course of the evening, about half-past six o'clock.

Did you find Tidd at home?—Yes.

What did he say to you?—He said, that several men that had promised to come had not been so good as their word, and that he should not wait longer than seven o'clock.

Did you wait till seven o'clock?—Yes.

Did any other persons arrive?—No.

When seven o'clock came, what did Tidd do?—He went to a corner of the room where there was a trunk, and took out a large pistol.

What did he do with it?—Put it into a belt that he had got round his body, he then took about six or eight pikes, about a foot long.

Iron pikes, or pike shafts?—Iron pikes.

Six or seven did you say?—I suppose there might be about as many as that.

What did he do with them?—They were wrapped in brown paper; and he took a staff about four feet long, with a hole at one end of it.

Was that hole calculated to receive the ends of the pikes?—Yes.

Did he take the pike heads with him?—Yes, he did.

You mentioned that a pistol was in a belt round his waist?—Yes.

Was that underneath his coat or over it?—Underneath his great coat.

So that on his coat being buttoned you could not perceive it?—No.

You went down stairs with him?—Yes.

Which way did you go?—Through Brook-street into Holborn.

And from Holborn where?—Straight on to the top of Holborn up Oxford-street.

Did you at that time know, or had you previous information as to the place you were going to?—No; I believe it was while I was in the room, I asked him where we were going to, and he said to a mews in John-street, Edgware-road.

In going along, did he tell you what you were to do, or had he told you before?—No. When we got into Holborn he gave me the pike staff; says he, "You take this."

Tell us what else he said as to what was to be done?—I asked him, as we were going along, where it was we were going to? He said I should know more about it when we got there; I still pressed him, I asked him whether we were going to the House of Commons.

What did he say?—He said no, there were too many soldiers about there: I then asked him where it was we were going to, and at last he said, "Grosvenor-square." I then asked him whether any body particular lived at Grosvenor-square, by their going there particularly; and he said there was a cabinet dinner there that evening.

Did he say at whose house it was to be?—No, he did not.

Did you ask him, or did he tell you, what was to be done there?—No, I did not ask him any more. Upon his saying that, I was fully convinced what was intended.

From Oxford-street, where did you go to?—We went to the top of Oxford-street, and turned to the Edgware-road.

Do you know Cato-street?—I did not know it before, I know it now.

Did you go there?—Yes.

When you got to Cato-street, where did you go.

When we got there, underneath the archway that leads to it, I saw two men whom Tidd seemed to know. He was a step or two before me, and spoke to them; we went, after stopping a few moments with them in the street, into a stable.

Did you go up the steps in the stable?—Yes.

About how many persons did you find in the stable and in the loft altogether?—I should suppose about four or five and twenty; but I had not been there above two or three minutes when some person asked how many there were, and proposed to count them; but Mr. Thistlewood said there was no occasion to count, for there were five and twenty.

When you got into the loft, and while you were there, was any thing said as to the plan they were going about?—There was a man that was sitting on one side of the bench (a carpenter's bench) a tallish thinish man with a brown great coat, with two belts on, and I think a sword by his side, and he was speaking of the impropriety of going with so small a number as five and twenty men to lord Harrowby's.

Upon his making that observation what was said or done by the other parties?—Mr. Thistlewood said the number was quite enough, for he only wanted fourteen men to go into the room; and supposing lord Harrowby had sixteen men servants, still that number was quite sufficient. The man in a brown great coat said, "After the business is done, and we come out, most likely there will be a crowd round the door, how are we to make our escape." Upon which Mr. Thistlewood said, "You know the largest body is already gone from here, this is the smallest part."

"The largest body is gone from here?"—I do not know whether he said "from here," but "the largest body is gone." Upon which, the prisoner Davidson spoke to this man, and said it was not right in him to throw cold water upon their proceedings; if he was afraid of his life, he might go, and they would do without him.

Did any thing further pass in the way of conversation?—Yes, the prisoner Brunt immediately said that sooner than they should give up the business they were going upon, he would go into the house by himself and blow them all up, if he perished along with them, and he said "for you know we have got that which can do it." I am not certain that those were the exact words, but that was the meaning of it. Upon which the man said, that though he did not think it altogether right to go himself, still as they were all for it, he would not be against it.

Lord Chief Justice Abbott.—That was the man in the brown great coat?—Yes: upon which he proposed that all the persons,

Mr. Attorney General.—Who proposed?—The man in the brown great coat; that all the persons in the room should put themselves under the orders of Mr. Thistlewood; upon which Mr. Thistlewood said that every one engaged in that business would have the same honour as himself, and he proposed that the fourteen men to go into the room should volunteer from among the persons then in the room.

Upon his proposing that fourteen persons should volunteer to go into the room, what did he say then?—He said that those fourteen that volunteered should range themselves on the other side of the room, towards that part where the firing afterwards came from, when the officers came.

There was a small room on that side?—Yes, there was.

Did they do so?—Yes. I do not know whether the whole fourteen, but I believe twelve or thirteen out of that number did so in the course of a few minutes.

Was any thing said as to what the rest were to do?—No. I heard nothing but the prisoner Tidd was coming out; he was one of the fourteen; he was coming out to me to say, "you may choose your situation," when Mr. Thistlewood put him back, and said, "you all know your places."

What took place upon that?—I do not remember whether any thing particular did; but afterwards Mr. Thistlewood was gone for a few moments, and he came up stairs and said they had received intelligence that the duke of Wellington and lord Sidmouth were arrived at lord Harrowby's. I do not recollect any thing else passing till the officers came up.

You were taken into custody in the room, I believe?—Yes, I was.

John Monument cross-examined by
Mr. Adolphus.

You say you had known Thistlewood: how long had you known him?—I never spoke to him before, till the time I saw him at Mr. Ford's at Lambeth.

That was when? how long before the meeting? do you recollect when about the meeting in Finsbury-market-place was?—No, I do not.

Was that before or since Christmas?—I think it was before Christmas.

Did you attend there?—Yes, I did; because Mr. Thistlewood asked me whether I should be there, when I was at Mr. Ford's.

Was Mr. Thistlewood at the Finsbury-market meeting?—I was too far off to see the persons that were. I cannot say whether he was or not.

What was the meeting there about?—was it about the transactions at Manchester, or not?—I think it was. I was there about an hour and a half. I was not near enough to hear what passed.

Was the business of the meeting to consider something about the transactions at Manchester?—I really cannot say.

You went to the Finsbury-market meeting, but did not take notice of what passed?—No, I did not take much notice. The day was very dirty, and I did not stop long.

There was no very particular acquaintance at that time between Thistlewood and you?—No.

How long had you known Brunt?—I never knew him till Mr. Thistlewood brought him to my house.

Did you know a gentleman of the name of Edwards at all?—No.

A long time passed between your seeing Brunt at one time, and his calling again on the 22nd of February?—Yes, a good while.

And all your former conversations had passed for nothing? in that time you thought no more of them?—I thought, not seeing me eager to follow their plans, they had left me.

So you said when they called again, "I thought I had lost you?"—Yes.

On the 22nd, however, you were to be trusted with the letters b, u, t, and some person was to give you t, o, n?—Yes.

And that was all that was confidentially reposed in you?—Yes.

You had no occasion to use those letters, I think?—No; because I went with Tidd.

When you went to the room in Cato-street there were twenty-five there?—Yes.

You must have been dreadfully crowded in that room?—There were three or four in the room below.

Even then you must have been dreadfully crowded?—No, they were almost all standing.

How high was the room? you are a short man?—Yes.

Do you think the ceiling was as high above your head, as that board over you?—Yes.

There was a carpenter's bench in the room, was not there?—Yes.

That took up a good deal of space?—Yes.

A man could not stand upon that?—No.

Was not the room entirely filled with you twenty, if there were twenty?—Not entirely filled.

Do you know the man in the brown coat, who he was?—No, I do not.

Have you since learnt that his name was Adams?—No, I know it was not him.

Some man in a brown coat, whom you do not know?—No.

What part was Adams playing there?—I do not remember him.

You do not remember his being there at all?—No.

You knew Adams?—No.

Did the man in the brown coat squint, or had he any thing particular about his eyes?—No; but I have seen the prisoner Adams at Hicks's hall, and again here, and I know that it is not him.

Do not you recollect Adams being there, and saying or doing any thing, for he is a very remarkable person?—No.

Did you go about the room, and see who were there?—No; I stood by the side of the bench.

Were there any men particularly tall?—I do not know.

Were there any men at all of Adams's size and height?—I cannot tell that.

Were you sitting or standing?—Standing generally; the man in the brown great coat was sitting on a little bench on the other side.

They were a good many of them, eating bread and cheese, were not they?—Yes; some of them were.

There was some bread and cheese produced, and they flew at it like famished men?—I did not see that.

They were eating bread and cheese, however?—Yes.

And they had some porter too?—Yes.

Cannot you recollect Adams being there?—No, I cannot.

Are you sure he was not there?—I am sure I cannot take upon myself to say that.

Have you any consciousness whatever of ever having seen him, until you saw him at Hicks's hall?—No; but the same observation may be made of many others.

Your observation is ingenious and just; you may have seen many persons and not have recognized them again?—Just so.

He is a man of remarkable appearance, with his eye and all?—Yes he is.

Do you know any of the other prisoners?

—I know the prisoner Davidson.

He is a man of colour?—Yes.

Do you know any other?—Thistlewood, Tidd, Brunt.

Those you know out of doors?—Yes.

And Davidson whom you know by his colour?—Yes.

The others made no impression upon you?

—No; but I recollect seeing the prisoner, Strange, in the room.

Why do you recollect him particularly?—Only that he was a short man, the same as myself, and standing by the side of me.

Have you told us all that passed there, according to your hearing and observation of it?—Yes, I have.

You can tell me nothing about Adams?—No.

Did you hear any person make any observation except the man in the brown coat?—No.

If any observation had been addressed like that by the man in the brown coat, should you have heard it?—I suppose I might.

You must?—Yes; perhaps I might.

How large is the room?—I cannot say.

It was a very small room; the twenty nearly filled it?—Not very small; I should say, there would not have been room for twenty more.

Would there have been room for ten more?—I think there might.

Was it as long as that box those gentlemen are sitting in?—Longer than that.

As long as that and the next?—I cannot say.

If any person had spoken with an audible voice addressing the whole, do you think you should have heard it?—I think I should.

You had totally lost sight of those people from the day of the Finsbury-meeting, to the 22nd of February?—Yes; I had, excepting when Mr. Brunt called upon me.

Was the conversation you had spoken of between the brown coated man and Mr. Thistlewood, and the others, so loud, that every person might have heard it?—I cannot say; but I was standing as near to that person with the brown coat as I am to you.

Was it so loud that every person within that distance must have heard it?—Yes; I suppose it was.

You come here in very honourable custody, I see, with greater attendants than you ever expected to have?—Yes.

Were you taken upon the spot or how?—Yes, I was taken in the room.

You surrendered, I suppose, when the officers came up?—When the soldiers came up.

You made no resistance?—No.

Had you any arms?—No; I had nothing about me; I was searched directly.

*John Monument re-examined by
Mr. Solicitor General.*

Were you one of the last that came into the room?—I cannot say how many came in after me.

Was the room nearly full when you came?—Yes.

How long had you been there before the officers came?—About a quarter of an hour before the officers came.

Did you know any of the persons in the room before you came there except Tidd, Brunt, and Thistlewood?—No; except the prisoner, Davidson, whom I had seen at one of two of the meetings.

The persons of all the rest in the room you were unacquainted with?—Yes.

Was it candle light?—Yes; there was a candle in the room.

Juryman.—Only one?—I am not certain about that; I know there was one; I cannot speak to others.

Mr. Solicitor General.—What was there upon the carpenter's bench?—There was a great quantity of swords and pistols, and two or three blunderbusses.

You spoke about Strange, that Strange stood by you; was Strange apprehended at the same time with you?—Yes.

You were both taken into custody together?—Yes.

How many were there in the room when the soldiers came in and took you into custody?—Four.

The soldiers took you all into custody?—Yes.

A gentleman has asked you about Edwards; do you remember when you were brought up at Whitehall, being handcuffed with Mr. Thistlewood?—I was.

Did Mr. Thistlewood say any thing to you about Edwards?—Yes; he said, when I was examined before the privy council, if I was asked who brought me to the meeting, I should state Mr. Edwards.

What did you reply to that?—I asked him how I could tell them such a falsehood, when he knew I had never seen the man.

What did he say in answer?—He laughed, and said that was of no consequence, for if I was asked what sort of a person he was, I was to say he was a man not much taller than I was, of a sallow complexion, and dressed in a brown great coat.

A Juryman (Mr. Goodchild).—My lord, I should be glad to ask that witness one question: whether, since his apprehension, he has had any conversation whatever with a man of the name of Adams?—No, I have not, except speaking a word or two to him, but none concerning this business.

Mr. Solicitor General.—Have you been kept separately confined?—Yes.

Did you ever see him, except when you were taken up as a witness to Hicks's hall, and when you were brought here to-day?—Never.

Thomas Monument sworn.—Examined by *Mr. Solicitor General.*

I believe you are brother to the last witness John Monument?—Yes, I am.

Do you remember your brother meeting Mr. Thistlewood at the house of a person of the name of Ford?—Yes, I heard him speak of it.

You were not there yourself, but heard him speak of it?—I was not there.

Do you remember Thistlewood, after you had had that conversation with your brother, calling upon your brother?—Yes, he did.

Do you know Brunt?—Yes, Thistlewood brought Brunt with him.

After they had come into the room, did they stay there for any considerable time?—No, I suppose not above five, or it might be ten minutes; I cannot say exactly to the time.

What did they do?—They did nothing; there was some conversation passed.

Did they go out of the room?—Yes, Thistlewood asked my brother if he might be permitted to speak with him.

Upon Thistlewood's saying that to your brother, did they go out of the room together?—Yes, they did.

How long did they remain out?—They remained out, I suppose, about two or three minutes.

Did they then return into the room?—Yes.

Did Thistlewood and Brunt go away together?—Yes, they did.

Do you remember, on the Tuesday before the Cato-street business, Brunt calling upon your brother?—Yes.

Did he call alone?—No, he brought a man of the name of Tidd with him.

Lord Chief Justice Abbott.—Did he mention his name at the time, or did you know him before?—No.

Mr. Solicitor General.—Was his name mentioned at the time?—Brunt mentioned his name.

Tell us what passed?—As nearly as I can recollect, when they came into the room my brother said to Brunt, "I thought I had lost you;" because we had not seen him for some time.

What did Brunt say upon that?—He said that the king's death had made some little alteration in their plans. My brother asked what those plans were? Brunt said they had different objects in view.

Lord Chief Justice Abbott.—You heard this, did you?—Yes, I did.

Mr. Solicitor General.—What further was said?—Brunt asked my brother to meet him up at Tyburn-turnpike on the next evening, and he agreed to meet him; and Brunt said to Tidd "suppose we give them an outline of the plan." But I do not think Tidd made any answer to it. Brunt then told us we were to meet up at Tyburn-turnpike at six o'clock on the Wednesday evening. They gave us the pass word, which consisted of the letters b, u, t. He said if any one of their party was there, they would answer t, u, b. They then went away after that.

Did you promise to go?—Not exactly; they

did not indeed press me; they spoke to my brother chiefly through all the business.

Did you in fact go yourself?—No, I did not.

What-time did your brother go out the next afternoon, the Wednesday?—It was near seven o'clock when he left home; Brunt called about five or nearly five for him to go with him, but we were busy finishing some work and he could not go with him at that time, and he then told him to call upon Tidd, who lived in Hole-in-the-wall passage.

About seven o'clock you say your brother went?—Yes, within a very trifle of seven.

You did not see him afterwards?—I never saw him afterwards.

Thomas Monument cross-examined by
Mr. Curwood.

All this conversation was directed to your brother John?—Yes; I was in the room when it passed; when he came first, he spoke to my brother.

Had you been long acquainted with Brunt before?—No; I never saw him till Thistlewood brought him that evening.

Which of the parties had you known before?—None.

Did you make any further queries of what was to be done?—No, I did not.

You did not suspect any thing wrong?—No, I did not.

What did you think they were going about?—That I cannot tell.

What did you suspect?—I could not tell; I supposed it was a meeting for some purpose, but for what purpose I could not tell.

You had not the curiosity to inquire?—No.

A club dinner, perhaps?—No, I did not think that.

A supper?—I did not know.

And you were determined not to ask?—I did not ask further than he mentioned.

Thomas Dwyer sworn.—Examined by
Mr. Gurney.

Where do you live?—No. 15, Gee's-court, Oxford-street.

Some time before the 23rd of February had you become acquainted with Davidson, the man of colour?—Yes.

Had you met him at different times?—I had seen him twice before the 23rd.

Upon either of these occasions did he introduce you to any body?—Yes.

To whom?—To Mr. Thistlewood.

Did Thistlewood and he and you go together to any house?—Yes.

What house?—A public-house at the end of Molineaux-street.

That is very near Cato-street, is it not?—This end of Cato-street.

How long was that before the 23rd, to the best of your recollection?—It was about the 9th, 10th, or 11th, either Wednesday, Thursday, or Friday.

Did Thistlewood have any conversation with you?—No, very trifling.

Tell us what it was he said?—He said nothing to me at that present time at all; he said he was in five or six different revolutions, that was all.

What else did he say?—Nothing more at that present time.

Any thing about Ireland?—He said Ireland was in a disturbed state at that time.

Are you an Irishman?—Yes.

Did he say any thing about your countrymen who were in London?—He said he had a good many of my countrymen.

Did you see Davidson the day before the people were taken up in Cato-street?—In the afternoon of the 22nd.

Did he make any appointment with you for the next morning?—No, not then, not for the 23rd.

The next morning, however, did you go any where?—No, I stopped at my own place.

After stopping, did any person call upon you?—Yes.

To what place did you go with that person?—Fox-court, Gray's-inn-lane.

At what time of the day?—About a quarter or half-past nine, when I left my own place in the morning.

Who called upon you?—A man of the name of Harrison.

Did Davidson tell you the night before any thing he was going to do?—He told me he was going on sentry next morning.

A person called upon you and took you to Fox-court?—Yes.

Had that person any thing with him?—A bundle wrapped up in some paper.

Who was the person that took you to Fox-court?—A tall man of the name of Harrison.

When you got to Fox-court, to what part of the house did you go?—A two-pair back room.

How did you get into the room?—I turned round a short passage into a door.

Was the room door locked or open?—I think it was locked.

How did you get the key?—I think he knocked at the door of the two-pair front, and a woman gave him the key.

When you got into the room, did you find any thing there?—Nothing but an old chair.

Was there any cupboard in the room?—Yes.

Did you see any thing in that cupboard, or any thing taken out?—No, I sat on the chair.

Was there any thing afterwards taken out?—Yes.

What was it?—A ball wrapped up with rope yarn.

Did Harrison tell you what it was?—A grenade.

Did he tell you what use was to be made of it?—No, he did not then.

Did he afterwards while you were there?—No.

Did any other persons come in?—Yes.

Who came in?—Thistlewood, Davidson, and a few more.

What had Davidson with him?—He had a blunderbuss and a pair of pistols, and a bayonet in his side pocket.

Did any other persons come in?—Yes, there were one or two afterwards came in.

Do you remember the names of any more?—No, I do not know that I can name any others.

Will you look at the bar, and see whether you can name any other persons that were there?—Yes.

Which did you see there?—This gentleman next me [*Brunt.*]

After Davidson had shewn those pistols, what did you hear him say?—I do not know that he said any thing particular at that time: he said he had given twelve shillings for a pair of pistols.

Brunt said this?—No, not Brunt, but Davidson.

After Davidson had spoken of his pistols, and shewn them, and said he had given twelve shillings, did you hear Brunt say any thing?—He said he would go out and buy a pair.

Did any thing pass from any of them about the use to be made of that hand-grenade?—Yes.

Who was it, do you remember?—Mr. Thistlewood.

What did Thistlewood say?—He spoke to them all at large, and said some of them were to be thrown into the horse-barracks.

Some of those hand-grenades?—Yes, and some were to be thrown into lord Harrowby's, to set fire to it, to blow it up.

Did Thistlewood ask you any question?—Yes.

What did he ask you?—He asked me how many of my countrymen I could muster.

Did he say when he should want them?—Half-past eight the evening of the 23rd.

Did you tell him how many you could muster?—Yes.

How many did you tell him?—About six or seven and twenty, or five or six and twenty.

Did he tell you where to go to?—Yes.

Where?—He told me they were to assemble at the Horse and Groom, but I was to be at six o'clock at the Pomfret-castle, at the end of Barrat's-court.

Where is that?—It leads into Wigmore-street, Cavendish-square.

Is that a house frequented by Irishmen?—Yes, it is on Saturday nights: they go in to have a pint of porter or any thing of that kind.

Did he tell you to what place you were to go to do any thing?—Yes.

Where to?—He told me I was to take a few, the best of them, to go to the Foundling-hospital, knock at the porter's lodge, put a pistol to his breast, turn round the right hand,

and there were five or six and twenty stand of arms at the next lodge.

What was to be done with them?—I was to seize them.

Did he tell you what was to be done at any other place?—At the same time another party would seize two pieces of cannon that were at the City Volunteers' riding-school in Gray's-inn-lane.

Did he say what was to be done at any other places?—He said there were more that would make a breach in Finsbury.

What more did he say?—Nothing particular more.

Did he mention any dinner that day? whether there was to be any dinner?—Yes, at lord Harrowby's.

A dinner of whom?—A cabinet dinner, or a cabinet council.

Did he say whether any thing was to be done there?—Yes, he said they were to attack at lord Harrowby's.

After this, did you see any bundle taken out of the cupboard?—Yes.

What was done with it?—It was planted on the floor, and a pint pot produced; that bundle contained powder.

Gunpowder?—Yes.

What was done with it?—There was a tin measure produced, and it was measured into some woollen bags.

How many bags do you think were filled?—I cannot say.

Were there few or several?—There were several of them.

Who did that?—Harrison.

After that did you hear Thistlewood talk to the short man in front? [*Brunt.*—No, he spoke generally to them all.

Did you hear any thing about any things being to be sent to any different places?—Yes.

What did he say?—He said there were a dozen pike handles to be taken to Mary-le-bone.

Any to any other place?—The remainder were to go, some to Finsbury, and some elsewhere.

Were you asked to take any any where?—Yes.

Did you agree to do it or refuse?—I refused.

Was any person who was there sent out with any of the things?—They were not in the room, I had not seen them, only what they said concerning them.

Did you see any bag?—Yes.

Did you see any thing put in it?—Yes, this powder that was measured and the grenades.

Did you hear any direction given to any person to take those things to any place?—The pike handles.

Did you see any pike handles?—No, I did not see them.

Were any directions given to any person to carry any thing to any place?—Yes.

To what place was that person told to go —

To the Horse and Groom at the end of Cato-street.

Who gave him directions?—Harrison.

Did Harrison go away too?—He went with the bag with those things.

Having before sent another person with some things?—He went out with an intention to get those handles, but where he went I do not know.

What did Harrison take with him?—This powder in the flannel.

Did he take the grenades away as well as the powder?—Yes, I think he did.

What were they put into?—Into a sack.

At about what time did you leave the room, to the best of your recollection?—I got home to my own place at twelve o'clock exactly.

Did you on that day go and give information of what you had seen and heard?—I told a gentleman.

Who was that gentleman?—Major James.

In consequence of what he said to you, did you go to the Secretary of State's?—Yes, I did.

At about what time were you at the Secretary of State's that day?—About one or half past.

Thomas Dwyer cross-examined by Mr. Curwood.

What has been your situation in life?—A bricklayer by trade.

How long have you been acquainted with Davidson?—Since the 4th of February; that was the first time I ever saw him.

You say it was he who introduced you to Thistlewood?—Yes.

What day did he introduce you to Thistlewood?—About the 9th, I think in the following week, the 9th or 10th.

Had you known any of the party before?—Never in my life.

They never having known you before, nor you them, they immediately opened these plans to you?—No; they did not speak any thing respecting them; I never knew any thing of them till that present morning the 23rd.

On that morning, the 23rd, they let you into their secrets?—Yes.

None of them having known you before?—No, except Davidson; I saw him on the 4th of February.

And that was an accidental meeting?—It was indeed.

Can you possibly imagine what it was in your character that should have induced them to trust you so suddenly?—I cannot say, indeed; I do not know what their meaning was for it. I was well known in that neighbourhood, being in the habit of being amongst a deal of my countrymen.

And you were always known as a very honest, loyal man?—I should think so; I have been fifteen years in that parish.

With a good character?—Yes, I believe so.

And yet, all on a sudden, a band of traitors trusted you with their traitorous designs?—Yes, they did, so far as I have stated.

That did not very much astonish you?—In fact I did not know the rights of it; I had partly an idea of it.

You were asked how many men you could muster?—Yes.

Give us an idea what you were to do with them?—It would be very serious for me to inveigle the minds of a parcel of innocent men in such a concern; and it would be more than perhaps I could do.

But, however, you agreed to do it?—I agreed on that morning.

What were you to do?—I agreed to have five or six and twenty men there; they asked me how many I could muster: I was rather frightened, and I said so many.

You were frightened?—Yes, I was rather frightened while I was in the room.

You were to be at the Foundling hospital?—Yes.

And there you were to get some arms?—Yes.

What did you expect to do with them?—I do not know indeed.

You would rob any body you were set to rob?—I should suppose so, if I should take such advice.

You did agree to do it?—Yes, at that present time, but I had no intention; only speaking the word, I wanted to get out of the place. I had no intention of being an accomplice at all in their designs, only I wanted to get out of the place.

Do you happen to know a man of the name of Huckleston?—No.

Were you ever examined in a court before?—I was here once on the trial of a woman that robbed a man of 7*l*.

Was that the only occasion?—Yes.

You are quite sure you do not know a man of the name of Huckleston?—No, not to my knowledge. I am sure I do not of that name.

Where were you at the time of the rebellion in Ireland? in England or Ireland?—In Ireland. I was quite a boy at the time.

What sized boy?—Quite a youth.

How old were you?—I cannot say, indeed. I can just remember it.

George Caylack sworn.—Examined by Mr. Littledale.

Where do you live?—At No. 2, Cato-street.

Do you remember on the afternoon of the 23rd of February last seeing any body in Cato-street that attracted your attention?—Yes.

Whom did you see?—Mr. Harrison.

Look round, and see whether you see him?—Yes, that is the man [*pointing him out*].

Had you known him before?—Yes, I had.

Where did you see him?—I saw him standing near the stable door in Cato-street with a candlestick in his hand, with a wooden bottom and an iron stick.

Did you speak to him?—Yes, I did.

What did you say to him?—Only asked him how he did, as I knew the man before. He said he was very well. He said he had taken

two chambers there, and was going to do them up, to clean them up.

What time in the afternoon was this?—About five o'clock.

In the course of that evening did you see any other people going in and out of the stable?—Yes, a great many.

How many altogether?—I suppose from twenty to five and twenty that I saw go in and out.

Between what times in the evening?—Between five and seven.

Richard Munday sworn.—Examined by *Mr. Littledale*.

Where do you live?—No. 3, Cato-street.

Do you recollect on the afternoon of the 23rd of February last seeing any people in Cato-street?—Yes.

At what time was it?—About half-past four in the afternoon I came from work, or about twenty minutes past four, hardly the half hour, I saw Davidson walking under the archway; I knew him by seeing him along with Mr. Firth. I had seen him along with Mr. Firth two or three times before, being in the habit of going to Mr. Firth to doctor his cows.

Did you see any thing further?—I saw Harrison about six o'clock open the cow-house door, and he shut it again; but in coming from my work I passed Davidson in the archway, and went and got my tea, and came back again, that might be I suppose near the half hour after five, it was not quite the half hour, but about twenty-five minutes, I went out to the chandler's shop to get some coffee, and what I wanted; and in coming back I went in and got my pint of beer at the public-house, and I saw Davidson go out and get a light from a woman at the public-house, and he had another candle in his hand, and opened the door to go in; in the way of his going in there was a kind of a bundle there, I supposed it to be a quatern loaf, but I cannot say whether it was or not; he had, as he stooped, two belts with two pistols in them, and a sword, which stuck out in this way (*behind*), under his great coat; I went in and mentioned it to my wife immediately, "In the name of God" —

Do not tell us what you said to your wife. Besides these two persons Davidson and Harrison, did you see any other persons?—There were several people two and three going out and in at different times; but there was a number in the place, I dare say I saw seven or eight; when the door was half opened in the place at a time.

What sort of a place was it?—It is a stable belonging to the general, and Firth was his servant.

General whom?—General Watson; one part of it is a chaise-house, and the other part a stable, where the horses used to stand; but Mr. Firth turned it into a cow-house, and kept five cows there.

Is there any loft?—Yes; a loft with two

rooms out of it; one a room with a fire-place in it, and the other a dark bed-room.

This place had been vacant for some time before?—Yes; Firth had taken his cows out, I suppose as much as six or seven weeks; he had purchased a place in Iron-foundry-lane, and put his cows there.

Had you observed, in the course of that afternoon, whether any thing was fastened up against the window?—There was a kind of hop-sacking was fastened against the front window, going by, and likewise over the partition of the stable door, where the railing was, a kind of a coarse matting.

Did you see that matting put up?—Part of it was up, I saw at watering-time, three o'clock, when I came home to water.

Lord Chief Justice Abbott.—Where was the matting?—On the inside, sacking or matting I call it the same; it was very coarse stuff.

Elisabeth Weston sworn.—Examined by *Mr. Littledale*.

Where do you live?—At No. 1, Cato-street, Edgware-road.

Do you recollect, in the afternoon of the 23rd of February last, seeing any people in Cato-street?—About three in the afternoon I was standing at the door looking at my little boys that were playing in the street, and I saw a man come from underneath a gateway with a bag on his left shoulder, and a key in his right hand, and he unlocked the gates and went in at the stable door.

Did you observe some time afterwards any body?—About six o'clock in the evening I had occasion to go an errand; I took my little boy in my hand, and as I passed I saw a man of colour; I was frightened, knowing the stable to have been unoccupied for some time. I said, "Oh dear," and passed on. I have been very ill ever since that took place.

How soon did you return from your errand?—About ten minutes. I was going to the corner of Molineaux-street, in John-street.

After you returned from your errand, did any body knock at your door?—I saw Davidson standing by my door when I came back, standing in the same place where he was when I went.

Should you know him again?—Yes, I certainly should.

Look round and see whether you know him again?—Yes, that is the very man; after I had been in doors, and got my light, and by then I had set my tea-things, a knock came loudly at the door, I went to the door saying to my little boy, "Your father is coming;" but when I opened the door, this man came and asked me to give him a light if I pleased; I said "Yes, to be sure;" he had two candles in his right hand, and he gave me one of them, and I gave him a light, and he took his hat off his head and put over it, and I leant out of my door and saw him go into the stable door; it was a little way open and he went in: that is all I know about it.

*George Thomas Joseph Ruthven sworn.—
Examined by Mr. Bolland.*

You are a constable of the public-office, Bow-street?—I am.

Did you, in consequence of directions you had received, go on the 23rd of February into Cato-street, Edgware-road?—I did.

Alone or accompanied?—Accompanied.

By whom?—By John Wright; there were three I knew that would meet me there.

When you got there, how large was your party?—At last it amounted, I believe, to about twelve, somewhere about that number.

Where did you go?—I went into the stable, and saw a man with a blunderbuss or a gun on his shoulder, and a sword or cutlass by his side.

At what time was that?—About half past eight.

Was any other person in the stable that you observed?—I saw one, and I have some faint recollection, but I am not sure, that there might be another.

Did the whole party follow you into the stable?—I believe so.

What did you do on getting into the stable?—When I saw the man with a gun on his shoulder, I said to some of the party that were following me to secure him.

What did you yourself do?—I went up a ladder which I found there.

Was any thing said by either of your men in the stable, or any of the parties?—Not that I am aware of; for I think it could not be a second before I was up stairs.

Where did that ladder lead you to?—To a loft.

What did you observe on getting into the loft?—I observed several men, and heard the clattering of arms, swords, and pistols, that I saw.

Had any of your party got up with you?—I had calculated about three or four.

Who were they?—Ellis and Smithers, I am sure of.

How many persons might there be? You saw a number?—I am not quite sure; but I thought, from the transitory view I had, about four or five and twenty.

What is the size of that loft?—Fifteen feet five one way, and ten feet ten the other.

Is there any other room adjoining to it?—There are two.

Communicating by doors?—Yes.

When you had gained the loft what did you say?—"We are officers, seize their arms!"

That you said?—I said that myself.

"We are officers," and then turning to your men, "seize their arms?"—Yes, just so.

Did you see any person in the room whom you knew?—I did.

Who was that?—Thistlewood.

How long have you been acquainted with the person of Thistlewood?—I should think four or five years; I knew him from the time of the trials before.

Where was he?—He was standing on the right-hand side of the table, as we entered near to the door of a little room.

Did he keep that position or move?—Immediately on my saying that, he looked up, and seized a sword that was on the table, and drew back into the little room.

Was the sword drawn?—It was.

What description of sword was it?—It appeared to be a very long one, and rather bright.

With that he retired into the little room?—Yes, he did.

What took place?—He stood fencing to prevent any body coming to him.

Did any body approach him?—Smithers did.

Upon Smithers approaching him, what happened?—He thrust his arm forward and stabbed him.

Did Smithers fall?—He did.

Did you hear any thing said in the loft upon that?—Smithers, when he fell, said "Oh my God, I am done!" or, "Oh my God!"

What passed after that?—The lights were put out almost immediately, in a minute or two. Somebody said, from the corner of the room where Thistlewood stood, "Kill the b—rs, throw them down stairs!"

How many lights were burning when you went in?—I think there might be eight.

And they were put out?—They were.

You were then all in the dark?—Quite in the dark.

What did you do?—I heard a rush at the stairs, and I joined in the rush saying "Ah kill them," and got down. I heard it, for I could not see it.

You joined in their cry and rushed down?—I did.

Upon getting down what did you observe?—I did not observe any thing till I got into John-street, and there I met with the soldiers, and returned with them. There were a great many shots fired before I got down.

Where were those shots fired from?—That I cannot tell; it appeared to me that they were fired in the direction towards the stairs.

From what part of the room?—From the further part of the room.

How many shots?—I think in the whole there might be between twenty and thirty; but some of those shots I think were fired from the inside to the street, not all in that direction.

That is from the windows?—Yes; from the windows into the street.

You say you met the soldiers and returned?—I did.

What did you observe on your return?—I observed a man going from the door. I called out to seize him, and as I called out, he lifted up his arm to fire.

Which man have you ascertained that to be?—Tidd; That is the man [pointing him out]. I caught hold of his right arm, pulled him round, and fell with him on a dung heap.

Did you succeed in disarming him?—The

soldiers came up instantly, and his pistol went off, he was secured.

Did you search him on his being secured?—I did.

What did you find upon him?—Round his waist I found a leathern belt.

Of what colour?—A sort of buff colour, such as they use for ladies shoes. In his pocket I found two ball cartridges.

Where was this that you searched him?—In the public-house called "the Horse and Groom."

Did you find any thing else upon him?—I do not recollect any thing else.

While you were in the public-house, was any other prisoner brought in?—Yes; a man of the name of Bradburn. The man who stands last there.

Did you search him?—Yes.

What did you find?—Round his waist a string four or five or six times round.

So as to answer for a belt?—It would do so.

Did you find any thing else upon him?—Yes, he had six ball cartridges, and three loose balls.

Lord Chief Justice Abbott.—Were those ball cartridges for pistols or musquets?—I am not well versed enough to speak to that, my lord.

Mr. Bolland.—Were any others brought in?—There were.

Who were they?—Davidson and Wilson.

Did you search Davidson and Wilson?—I did not.

Did you see whether they were accoutred at all?—I did not.

Did you remain there, or return to the left?

Lord Chief Justice Abbott.—Was he secured?—I do not know whether it is material, but when Davidson was brought in, he damned and swore against any man who would not die in liberty's cause, that he gloried in it.

Mr. Bolland.—Did he do any thing else?—He sung a song, "Scots wha' ha' wi' Wallace bled," part of it, he was restrained from singing the rest.

Did you then go back to the left?—I did.

Who was in possession of it?—Some soldiers, and some of the people of the office.

Did you find any persons there who were afterwards taken into custody?—I did.

Who were they?—There was Shaw, Strange, I think his name is.

Were there any others there?—There was Cooper there.

Was Monument there?—Monument was there.

Gilchrist?—Yes, and Gilchrist.

Upon getting into the room, did you observe any thing more particularly, of any arms, or any thing of that kind?—I saw arms in the room, and I told them to search the room, and whatever each found to keep in his own possession.

Did you find any thing?—Yes, two swords; a bag which I afterwards found to contain ten hand-grenades, I think it held them.

Were they all of the same size?—All these in the bag were of the same size, and there were two parcels wrapped up in brown paper, nothing but tow as it appeared to me, and tar or something of that kind.

In the shape of balls, or what shape?—They were wrapped up close together.

What was done with the other arms; did those persons so keep them, or deliver them up to you?—They kept them at the time; there was one much larger than the rest I have described.

One ball?—One grenade.

Had they fuses in them?—They had all those; one was as big as my hat nearly.

Who took that?—Nixon found it, and gave it to me at the time.

What was afterwards done with those things; were they taken to Bow-street?—They were.

And deposited there?—They were taken away again from Bow-street, but since deposited in the possession of an officer of Bow-street.

They are all here to day?—They are.

Before you went to the stable were you at the Horse and Groom?—I was.

Did any thing take place while you were there?—There were three or four men come in, four I believe at last mustered.

Do you know any of those men?—I did not know them at the time, but I recognized them afterwards.

Was Cooper one of those men?—Yes, he was, Gilchrist, behind, was another.

Did they bring any thing with them?—They brought a stick.

Which of them?—Cooper.

What sort of a stick?—A broom-stick or mop-stick.

What did he do with it?—It was left in the room when they went out.

Did he or any of the party return for that stick?—Gilchrist returned.

Did he succeed in getting it?—He did not, it had been removed.

By whom?—By the boy of the house, who observing that one end of it was cut—

Did you observe that?—I did.

Did you take possession of that stick?—I did, I have it now.

How was the stick cut?—Cut at the end about this depth down, as if to receive a socket of any thing. I likewise had a tuck stick brought me the next morning, and a dozen pieces of stick a sort of pike shaft.

Who brought those?—They were brought by a person called Flannagan, and another person. I have had them in my possession ever since.

George Thomas Joseph Rathbone cross-examined by *Mr. Adolphus*.

You say you have known Thistlewood ever since the former trial?—Yes.

Do you mean that in 1817, when doctor Watson was tried?—Yes, I do.

When had you seen him last before this transaction on the 23rd of February? Stop a moment before you look to your book, had he been out of sight for some time?—No, not a fortnight certainly.

Had he lately been imprisoned to your knowledge?—No, not that I know of.

I mean at Horsham?—I have heard of that.

Do you know how long he had been come back from Horsham?—No, I do not.

Had you seen him several times before the 23rd of February?—I had seen him more than five or six times within two or three weeks.

Perhaps you had some particular motive for looking after him at this time?—I had.

A motive connected with this event that took place afterwards?—Not that I am aware of.

I mean watching some proceedings, the end of which was this meeting in Cato-street?—Not that I am aware of, I was watching him for another purpose, as I believe.

Do you know a man of the name of Edwards?—I do not.

Is there an officer in your office that has a relation of that name?—We have I believe four or five Edwards's; but I am not aware what relations they have.

You have four or five Edwards's in your office, do I understand you rightly?—I think there are four.

I am not pinning you down to the number; but there are about that number, there are three or four?—I remember three perfectly, and I think there are four or five.

You were employed for some time before that to look after Thistlewood?—Yes.

Upon whose suggestion that was, except those who employed you at the office, perhaps you do not know?—I do not.

You have seen this person to whom I allude, named Edwards, since the 22nd of February?—I do not know the person to whom you allude.

*James Ellis sworn.—Examined by
Mr. Attorney General.*

I believe you are conductor of the patrol at the Public-office, Bow-street?—I am a conductor.

Did you, on the 23rd of February last, go with the other officers to Cato-street?—I did.

About what time did you get to the stable?—I think about half past eight, as nearly as I can judge.

Did you go in after Ruthven?—Immediately after, as soon after as I could walk in.

Upon your going into the stable, did you observe any man in the stable?—I did; I observed two men.

Did you observe whether either of them had any belts?—The first man nearest to me had two white belts, that apparently went across his shoulders.

The one hanging over one shoulder and the other over the other?—Yes, cross belts.

Did you observe whether he had any thing in his hand?—Either in his hand, or by his right side, he had a carbine or short soldier's piece, something of that kind; and in his left hand, or by his left side, I cannot say exactly which, a long sword.

Did you observe his person?—I did on coming close to him; we were all crowded close at the time; I took hold of his collar and turned him round, and I observed he was a man of colour.

Where was the other person whom you saw?—The other person was between the foot of the ladder and the manger in the furthest stall; there were three stalls, and this was the stall nearest the ladder.

Did you follow Ruthven up the ladder?—I did, as close as I could venture.

As you were going up the ladder, did you hear any person say any thing from the stable?—I think it was before I got to the step of the ladder, I heard him say something giving notice; the last word was "men," but what the other words were I cannot say, but it was a notice to those above.

When you got into the room above, what did you find there?—Upon gaining the top of the ladder, I observed a number of men falling back behind a carpenter's bench that stood across the room close to the wall.

Did you hear any noise as you went into the room?—As I entered the room, I heard a noise similar to the rattling of swords, like two people fencing almost.

How many men appeared to you to be in the room?—From what I could judge, there appeared to be from twenty to five and twenty, I cannot speak with more certainty.

Did you observe Smithers?—On gaining the top of the ladder, there were four or five of the men, evidently, endeavouring to back into the little room at a distance of four or five feet from the ladder.

There were two rooms opening into the loft?—Yes, this was the further one.

Consequently the one looking into the street?—Yes it was. At the moment I gained the top of the ladder, Ruthven who was before me cried out loud, "we are officers, seize their arms," or "surrender your arms," I cannot be positive which.

This man backing as you say into the room, did you observe Smithers do any thing?—Not just at that moment: previous to that, Thistlewood—

You know Thistlewood?—I knew him the moment I saw him again. I did not know him before, but I am perfectly satisfied that is the man. He held his sword in his hand, and his hand shook at me: he stood in this manner: I held out my staff in my left hand, in this manner [*describing it*]: I might be then about five or six feet from him, five feet perhaps.

Upon your holding out your staff in that way, what did Thistlewood do?—He still menaced me with his sword; I instantly held up my pistol with my right hand, and desired him to desist, or I would instantly fire.

What happened upon that?—At that moment Smithers had gained the top of the ladder, and he rushed forward to the little room. Thistlewood, and the other men that were with him at that time, got back into the little room some feet, and upon Smithers just getting to the side of the door, as I may be here, Thistlewood rushed forward, and struck him with his sword near to the right breast.

Did Smithers fall upon that?—Upon that I saw Smithers' hands go up in this way, [*describing it*], and his head went back, and he said, "Oh, my God," and he fell.

He fell into your arms?—No, he staggered against me: upon seeing that, I immediately fired my pistol, but without effect; Smithers staggered against me at the moment I had fired, and fell back past me, more to my left.

He fell dead?—I believe he fell dead: whether he staggered against Ruthven or not I do not know: the last light I saw was the flash of my own pistol; the candles were put out at that moment.

You were forced down the ladder, I believe?—Yes, we were. I went into the door-way, and stood in the door-way for a second or two.

The door way, in Cato-street?—Yes.

Were any shots fired during that time?—Yes, many shots were fired; two or three of which passed me in the door-way.

Were any shots fired from any other part at that time?—I saw one shot fired by a tall man, he stood under the ladder, and fired up towards the manger.

Were any shots fired from the window of the little room?—Yes; while I was standing at the door there were.

Could you judge in what direction they were fired?—They were apparently fired towards the door.

Towards the door of the stable?—Yes.

Upon that did you pursue any body down Cato-street, towards Queen-street?—I heard a cry, and saw a man running with his belt on.

In the direction of Queen-street?—Yes.

John-street is on the left of Cato-street, and Queen-street on the right?—Yes, I pursued and took him about seventy or eighty yards from the stable door.

Who was that man you so pursued and took?—Davidson, the man of colour.

When you secured him had he arms?—He had a carbine, or a short piece of that kind, either slung to him, or in his hand, and in his left hand a long sword.

Do you believe that is the man whom you first saw when you went into the stable?—I do believe that is the man, but I am not positive; I have very little doubt in my own mind that it is the same.

I believe you afterwards assisted in securing some of the persons in the stable?—After delivering him to the custody of another person, I assisted in securing four of them in the loft.

Do you know who the four persons were?—I am not positive as to their persons; I recol-

lect Monument to be one, but I am not positive to the other three.

James Ellis cross-examined by *Mr. Curwood*.

What situation do you hold?—I am a conductor and a constable.

You had the conduct I suppose?—I had the conduct of a part, Mr. Ruthven was the principal officer.

Who had the warrant?—I had the warrant.

William Westcott sworn.—Examined by *Mr. Gurney*.

You, I believe, are one of the conductors of the patrol of Bow-street?—I am.

Did you go with the other officers to Cato-street, Edgware-road, on the 23rd of February?—I did.

Lord Chief Justice Abbott.—You are a constable also?—I am.

Mr. Gurney.—I believe at Bow-street you are all constables?—Yes.

Lord Chief Justice Abbott.—You are all sworn in as such?—The biggest part of us are.

Mr. Gurney.—Are Ruthven, Smithers, Ellis, and yourself?—Yes.

And Nixon?—Yes.

Did Ruthven, and Ellis, and Smithers, go up the ladder into the loft?—They did.

Did you hear any disturbance going on in the loft; any firing?—Yes.

Did you remain in the stable?—I did.

While the others were going up, or when they were up, did you observe any person in the stable?—I did.

Who was that?—Ings; that is the man [*pointing to him*].

What did you do?—I took him by the collar.

You and he had a contest I believe?—Yes, we had against the wall.

Whilst you and he were in the contest, did you find the other officers coming down the ladder?—There was a terrible confusion in the loft; he went to put his hand to the right side, as I thought, to get something, and I hit him a blow on the side of his head; as I was getting out my handcuffs, they came down a number of them from the loft.

In what manner?—Some of them tumbling down, and others came down afterwards gently.

Did you observe any one of those whose face you knew?—I did.

Who was that?—Thistlewood.

Lord Chief Justice Abbott.—Was there any light in the stable at that time?—There was.

Mr. Gurney.—Had you officers taken a light?—No, not at that time.

When Thistlewood came down the ladder, what did he do?—He turned round and presented a pistol to my head; I put up my hand in this kind of way to defend myself.

What did he do?—He fired at me.

How near to your head was it the pistol was fired?—Very near; there were three holes made in my hat [showing them]. I went to make a rush, and received a blow on the right side of my head, and I fell with it.

What was that blow from; was it given you by a weapon or a fist?—I do not know; but it beat the hat in.

When you were down, did you observe Thistlewood do any thing?—Yes, he made a cut at me with something like a sword, and went out at the stable door.

Lord Chief Justice Abbott.—Leaving you in the stable?—Yes.

Mr. Gurney.—Did you attempt to follow him?—Yes; but he was out of sight before I could get at him.

Were you wounded at all?—Yes, in the hand with a ball, when I put up my hand to shield myself, the ball touched my hand and grazed it in this way.

Luke Nixon sworn.—Examined by Mr. Littledale.

Are you one of the Bow-street officers?—Yes.

Did you go to Cato-street, on the 23rd of February last?—Yes.

When you first got into the stable, what did you see?—There was a ladder just by entering the front of the door, and I saw Ruthven, Ellis, and the deceased, and Gibbs; they went up and I followed them; against I got to the top the lights were all out, and I remained about half a minute or scarcely so much. Just as I got up, I saw Ellis fire a pistol, but I thought it was they had fired at him; it was into the little room he fired it.

As soon as the fire was returned, when Ellis fired the pistol, were you knocked down?—Another pistol or two were fired from this little room, but I could not see; I was only just at the head of the stairs, then there was a rush and I fell backwards, hit my leg against something, cut it about three inches, and my head went against the wall, and cut my hat. I fell down stairs, and then there came a rush of people down, and I think I saw one about two steps from the bottom. I saw him present a pistol towards Westcott.

Who presented that pistol?—I really believe it was Thistlewood: I really believe it was that man that sits down there, he presented it against Westcott; but his side face I could not distinctly see.

At that time had Westcott apprehended any body?—He had got Ings in custody when I went up stairs.

Did Ings get away from him?—He got away from him after they shot at him.

Did you pursue Ings?—Westcott said "Stop that fellow," and I pursued Ings.

Was he brought back again?—Yes; he was taken by Wright and Chapman, I believe; they had got him in custody.

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Some time afterwards, did you find any thing in the stable?—I went into the stable afterwards, and found a sword.

Any thing else?—Then I went up stairs again into the loft, and I found a bayonet; and then I saw Ruthven hunting about, and I followed him, and he found a bag and opened it, and I saw some balls about this size [producing one], there were a quantity of them, I cannot tell how many.

Did you find any thing besides those?—Afterwards, when I was going down stairs with those combustibles, there was another piece of stuff in a kind of a tin can wrapped round with paper; I shook it; I look upon it, it was seven or eight pounds or more than that.

You delivered it to Ruthven?—I did.

John Wright sworn.—Examined by Mr. Bolland.

You are a patrol at Bow-street?—Yes.

Were you one of the party of officers that went to Cato-street on the 23rd of February?—I was.

Where did you muster?—I went to the Horse and Groom, in company with Mr. Ruthven.

While you were in the Horse and Groom, did you see any of the prisoners come in?—Cooper and another came in, and had a pint of porter.

Had Cooper any thing, or did he leave any thing?—He brought in a stick, and left it behind him on the seat.

What sort of a stick was it?—A broomstick or mop handle.

Do you know whether Ruthven has it in his custody?—I saw it in his possession afterwards.

Did you accompany the party to the stable after that?—Yes.

What happened when you got into the stable?—After I had got about three or four stairs we were knocked back again; we were driven back again. I turned round, and observed a man in the further stall.

What sort of a man was he in person?—He had a great coat on; but I should not be able to swear to him.

What sort of a person was he?—A stoutish person.

Did you observe any thing on that man?—I observed he had something shining under his coat; I took it from him and found it to be a sword on one side, and a knife from the other side, a butcher's knife.

Where is that knife?—It is up stairs.

What sort of a handle had it?—A butcher's handle tied round with wax end.

Lord Chief Justice Abbott.—Do you mean to produce the knife?

Mr. Bolland.—Yes, my lord. Did you take that man into custody, or did he escape?—At that moment I was knocked down and received a stab in my right side, and the man escaped.

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Did that disable you from doing any more, or did you recover from it?—I got up and went out of the door, and shortly after the soldiers came down. On their coming down they stopped me; I told them I was an officer. Captain Fitzclarence went into the stable, and there were two persons brought out.

Who were they?—Wilson was one, and Bradburn, who stands on his right-hand side, another.

Did you search the person of Wilson?—I searched Wilson, and found some ball cartridges in his pocket, and I found a haversack on his side, suspended across his shoulders, which hung on the right-hand side of him.

Did you find any thing in that haversack?—There was a ball cartridge there, and a pair of scissors.

How many ball cartridges?—There might be about two dozen.

Did you find any thing else?—A gun flint or two.

William Charles Brooks sworn.—Examined by Mr. Solicitor General.

I believe you are one of the Bow-street patrol?—Yes.

Where were you stationed on the 23rd of February, in the evening?—I just turned into John-street, and was asking a coachman whether he had seen any men;

Never mind that, what passed at that moment?—Mr. Birnie came up to me and said "Run Brooks," and pointed over the way.

What did you see over the way?—I saw the prisoner Ings and a man before him with a cutlass drawn, but it was so dark I could not distinguish whether the other was one of our people or not; I learnt that afterwards.

In consequence of this what did you do?—I saw Ings with a pistol in his hand, presenting it to the other man; I said "you scoundrel," he turned sharp round, and said, "I will shoot you," presenting the pistol; I made a snatch at it, and he fired the pistol.

What is that you have in your hand?—A great coat; the shot passed through the collar of it, through this coat I have on now, and this waistcoat; bruised my shoulder, and went out at the back of my neck; there is a mark of it here [*in the back of his neck*].

After he had fired the pistol, what did he do?—I staggered into the road a little way, and he came into the road a little way, I suppose, in fear of my partner, and then went off towards the Edgware-road; he was not above ten yards; I pursued him, and just as he turned the corner, a very little way from the corner, two or three yards, he flung the pistol from him. I was never further from him than I am from that gentleman; I called out to stop him, because I thought I was going to fall.

Was he stopped?—Yes, he was, by Moay the watchman; Moay had hold of him about a second before I had.

Did you see Moay lay hold of him?—Yes, I did.

When you came up to him what did Ings say?—I said, "You rascal why did you fire at me, a man you never saw before?" he swore at me, and said, he meant to kill me, and he wished he had done it, as he knew he should be hung.

Ings.—Pray my lord, am I permitted to ask no questions?

Lord Chief Justice Abbott.—You are not upon your trial at present.

Mr. Solicitor General.—Are you sure those you have repeated, are the expressions he made use of?—Yes, I am quite sure.

Ings.—It is false.

Mr. Solicitor General.—After he was taken, was he searched in your presence?—We took him down to Marybone watch-house. I said, "If you offer to put your hand into one of your pockets, I will knock you down," or "knock your brains out;" I did not know but that there might be something in his pocket; he said "You may as well as at another time."

Lord Chief Justice Abbott.—This does not refer to the general matter; any thing about him is evidence in confirmation of that.

Mr. Solicitor General.—Did you search him?—Yes, he had two haversacks, one slung over his shoulder, and another over his arm.

Had he a great coat over them?—Yes, so as to hide them.

What else did you find?—I found a belt buttoned round him, apparently to hold two pistols on each side.

Two brace?—To hold two pistols on each side; I put my hand into his right-hand pocket and pulled out a tin case nearly full of powder, and a letter belonging to some society: I thought it was the Free-masons' society.

Did you find any thing else?—No, I saw my partner take three slugs out of his other pocket.

Who is your partner?—Champion; and a knife case about that long.

About a foot long?—Nearly that; I took nothing else but a knife and a comb from him; he was confined, and I went back to the stable.

Giles Franklin Moay sworn.—Examined by Mr. Solicitor General.

I believe you are a watchman?—Yes.

What was your beat on Wednesday night, the 23rd of February?—In the Edgware-road.

Did you hear the discharge of any fire-arms?—Yes, I did.

Did you afterwards see any men together, one of them running?—When I first heard the firing, I came immediately down towards it.

Down John-street?—No, down Edgware-road, I saw a man immediately come out of John-street, and fire immediately. I cannot say whether a carbine or a pistol; then I saw Brooks stagger; it was very moon-light: then

another came and called out stop thief: I took the road and met him.

Did you stop him?—Yes; I struck at him, and he caught my stick in his hand, and then we had a tussle; then I kept him till Brooks came down, and we found some slugs, six or seven, and some powder in a tin box, and a knife, sheath, and a belt, on each side to hold a pistol.

Joseph Champion sworn.—Examined by Mr. Gurney.

You are one of the Bow-street officers?—Yes.

Did you accompany them to Cato-street, on the night of the 23rd of February?—I did.

I will not take you over the whole story; but did you see any person you knew get through the stable and get away?—No, except Ings.

Lord Chief Justice Abbott.—Did you know him before?—No.

Mr. Gurney.—Upon the other officers going up the ladder, did you hear Ings say any thing?—Yes.

What did he say?—He said “look out above there,” as a signal as I thought: he was standing with his back against the wall, just facing the ladder. These are the things I took out of his jacket pocket; this is the case of a knife, four pistol balls, and a key and a pistol.

Where did you take those from him?—In Marybone watch-house.

After the officers were driven down the ladder, did you see any person escaping?—I did not see any persons in the stable; there was a person got down into the rack.

Did you see any person make his escape?—I saw no other person but Thistlewood, that was in Cato-street.

Had he any thing in his hand?—A sword, which he waved once or twice opposite his person, though there was no person opposite to him.

Lieutenant Frederick Fitzclarence sworn.—Examined by Mr. Attorney General.

I believe you are a lieutenant in the Coldstream guards?—Yes.

Do you recollect, on the 23rd of February, going with a picquet to John-street?—I do.

You had been desired to attend by Mr. Birnie, the police magistrate?—I had.

About what hour was it when you got to John-street, do you recollect?—I should think near eight, between eight and a quarter past.

Some time after you had been in John-street, did you hear any thing that attracted your attention towards Cato-street?—Directly after I was in John-street, I heard a pistol shot, which appeared to come from Cato-street.

Did you upon that get the picquet to advance towards Cato-street?—I then brought the picquet forward double quick towards Cato-street.

We understand there is an arch over the

entrance into Cato-street out of John-street?—Yes.

On entering that archway, what occurred?—I met an officer who halloed out, “soldiers, soldiers, the door way! the stable.” I ran towards the stable, and I was met on my right hand by one man, and on my left by another: the man at the stable door cut at me with a sword, and the one on my left presented something at me; the one in the door-way seeing a body of troops coming on (the picquet) ran into the stable.

Lord Chief Justice Abbott.—Was that the man that cut at you?—Yes, my lord, we exchanged several cuts before he went in.

Mr. Attorney General.—What did the other man do upon that?—I could not see after he had done this, but the moment he presented a pistol, the other man cut at me; there was a scuffle at my right hand: I ran into the stable door.

There was a scuffle between Legg and the men?—I believe there was. I followed the prisoners in; I ran in, and came against somebody inside the stable: he gave himself up, saying, “do not hurt me, do not kill me, and I will tell you all.”

Do you know who that was?—I do not know, it was in the dark.

Was it one of the men that was secured?—Yes, it was; I gave him to some of my men, and ran into the stable.

I believe then you went to the up-stairs room?—No. I then ran up into one of the stalls, and secured another man: the soldiers took him away. I then called to a file of grenadiers, to follow me up the ladder: upon my going up stairs, there was a light appeared gradually coming up from the bottom: when I got up, I secured from three to five.

You do not know the number?—No; I do not know whether it was three, four, or five: I rather think it was four.

It was four, but it is not material?—I went down immediately after having secured them; directly after I got up, I fell against the body of poor Smithers.

He was lying dead?—Yes, close to the top of the ladder.

I believe, also, you saw arms in the loft above?—Several.

Mr. Attorney General.—My lord, I will not call any of the other soldiers; I do not feel it necessary to trouble your lordship with their evidence.

Samuel Hercules Tawnton sworn.—Examined by Mr. Solicitor General.

I believe you are a Bow-street officer?—Yes, I am.

Did you, on the morning of the 24th, go to Brunt's lodgings with a warrant?—Yes, I did.

When you went up stairs, did you first go into the front room, or into the back room?—Into the front room two pair of stairs.

Did you search those rooms?—I did.

I believe you found nothing material there?—No, nothing material.

After you had searched those rooms, did you go into the back room?—Yes.

What did you find there?—I found two rush baskets, one tied up in an apron, and the other not tied up.

Where was Brunt? had you any conversation with him?—He was in the front room while I searched the back room; it was an empty room.

Did you ask him about those baskets?—Yes, he said he knew nothing of them; he did not belong to that room; it was not his apartment.

Lord Chief Justice Abbott.—Did he say he knew nothing of them?—That the room did not belong to him.

Mr. Solicitor General.—Did you ask him as to the baskets?—Yes, I brought them in; he said he knew nothing of them.

And he also added that the room did not belong to him?—Yes, he did: there was a pike shaft found in the room, and an iron pot; that was all besides the baskets.

Were there any marks of pitch or tar on the iron pot?—Tar, I believe, there was at the bottom of it.

Did any conversation take place in his presence, as to whom the room belonged to? did the landlady come up?—When I found he denied the apartments, I sent for the landlady.

Mrs. Rogers.—Yes.

Did she come?—She did. I asked her who those apartments belonged to.

In Brunt's presence?—Yes; she said that her niece Eleanor Parker had let them to a man she did not know who, but in the presence of Brunt.

Whatever she said, she said in the presence of Brunt?—Yes.

What did Brunt say as to his knowing any thing of the man who had taken those apartments?—I asked Brunt who this man was? He said he had met him in a public-house.

Lord Chief Justice Abbott.—When you asked *Mrs. Rogers* to whom the back room belonged, what answer did she make?—She said she did not know the man; her niece had let it to a man when Brunt was in his company.

Mr. Solicitor General.—What did Brunt say to that?—He did not say any more than I have repeated: that it was a man at a public-house, but he did not know his name, for I asked him his name.

What did he say about a man at a public-house?—That it was a man at a public-house who was along with him, when the lodgings were taken.

Was that the answer he gave when the question was put, who had taken the room?—Yes.

After you had searched this place did you go to Tidd's?—Yes; I did immediately afterwards.

Where was that?—In Hole-in-the-wall passage, No. 5, near Gray's-inn-lane.

When you went to Tidd's, what did you find at Tidd's?—I found a very large box; a box full of ball cartridges.

Lord Chief Justice Abbott.—Do you mean to say a box, or a very large box?—About two-feet long, and a foot and a half wide. I counted the cartridges, and they amounted to 965.

Mr. Solicitor General.—Did you find any thing else at Tidd's?—Yes.

What?—Some grenades.

How many?—Ten; and a great quantity of powder.

Of gunpowder?—Yes.

Did you, besides the ball cartridges that you found in the box, find any other ball-cartridges there?—Yes, in a haversack.

How many?—A great many.

Can you tell us about how many?—434 balls in the haversack; 171 ball cartridges; 69 ball cartridges without powder, that is a ball in each cartridge; and about three pounds of gunpowder in a paper.

There was a coarse canvas cloth. Did you find any thing in that?—Ten grenades and eleven bags of powder.

Are those the same grenades you have just spoken of?—Yes.

What were the ten grenades in?—In a brown wrapper which was tied up; ten grenades and eleven bags of powder, one pound each.

Lord Chief Justice Abbott.—What sort of bags were those?—Flannel bags.

Were there any of the same description of bags that were empty?—There were ten flannel bags empty.

Mr. Solicitor General.—Were there any balls?—There was a small bag with a powder flask and 68 balls.

Musket balls?—Yes; 4 flints, and 27 pike handles.

Are all those things here?—They are all here.

You told us you took the two baskets you found at Brunt's?—Yes.

You afterwards, I presume, searched the baskets?—Yes.

Tell us what were the contents of those baskets?—Nine papers, I believe I mentioned before, with rope yarn and tar, and some steel filings. In another basket there were four grenades, three papers with rope yarn and tar, two bags of powder of one pound each.

The same description of bags as those you have just spoken of?—Yes, flannel bags, and five flannel bags empty, one paper with some powder in, one leather bag with 63 balls in it; that is all that was in the basket; there were also one iron pot and one pike handle.

These you took into your custody, and they are there?—They are.

Samuel Hercules Taunton cross-examined by Mr. Adolphus.

When was it you found all those things?—The 24th of February.

Was Brunt present when you found those things?—Yes, he was.

As to those found at Tidd's, Tidd had been away from the day before?—Yes.

Samuel Hercules Taunton re-examined by Mr. Solicitor General.

What time was it when you went to Tidd's?—I went to his lodgings after I had been to Brunt's, I believe it was about half after eight o'clock.

Daniel Bishop sworn.—Examined by Mr. Gurney.

You are an officer at Bow-street?—I am.

On the morning of Thursday, the 24th of February, did you, with other officers, go to apprehend Thistlewood?—I did, to No. 8, White-street, Little-Moorfields.

About what time?—Between ten and eleven in the morning.

What was the name of the person who lived in the house?—Harris.

After searching different rooms in the house, did you get a key and open the door of a room on the ground-floor?—I received a key from Mrs. Harris.

You had searched the up-stairs rooms first?—Yes.

Did you at last receive a key from Mrs. Harris, and open the door?—I opened the door facing Mrs. Harris's room on the ground-floor.

Upon opening the door, whom did you see in the room?—I saw Thistlewood put his head from under the clothes, he was in bed, the shutters were shut, but there were some small holes which admitted light enough for me to see who it was.

What did you do?—I had a pistol in one hand, and a staff in another; I told him my name was Bishop, of Bow-street, I had a warrant against him, and I threw myself on the bed.

What did he say?—Thistlewood said, "I shall make no resistance."

Did you afterwards search any of his clothes?—With the assistance of my brother officer, we searched him; he had then his breeches and stockings on in bed.

Were his coat and waistcoat lying by the bed side?—They were.

Did you search the waistcoat pocket?—Yes, I did.

What did you find in it?—I found three leaden balls, two flints, one ball cartridge, and one blank cartridge, likewise a small silk sash.

Did you find any thing in his coat pocket?—I saw Lavender take from his coat pocket a

black cloth belt, with a place to put pistols and a sword in, in conveying the prisoner in the coach,

Mr. Gurney.—We need not go into that.

Daniel Bishop cross-examined by Mr. Curwood.

Did Edwards go with you?—I do not think either of them did; we have several of that name at Bow-street.

I do not mean one of your officers, but another man of the name of Edwards?—I do not know any other.

You went in consequence of information?—Yes, which I received not ten minutes before; I did not know of it ten minutes before.

Did your informant go with you?—No, he did not; or I should not have gone to the other rooms first.

Stephen Lavender sworn.—Examined by Mr. Gurney.

Produce the belt you found in Thistlewood's pocket? [*The witness produced the same.*]

There are places for two pistols?—Yes, there are. [*George Thomas Joseph Ruthven, produced various articles.*]

Mr. Solicitor General.—First produce these found at Cato-street?—This is the mop-stick that was left at the public-house [*producing it*], that is the belt taken off of Tidd [*producing it*], these are two of the swords I found in the room.

In what room?—The loft in Cato-street; this is the large grenade found in Cato-street, which was given to me by Nixon.

Mr. Solicitor General.—The arms till within the last twenty-four hours were loaded, the greater part of them?—They were unloaded yesterday.

Were they loaded with ball?—They were, and this is one of the hand-grenades; there were ten of them, one has been since taken away by order of colonel Congreve.

A Juryman [Mr. Goodchild].—It will be necessary, perhaps, my lord, to have one of those opened, as it is stated they contain powder?

Mr. Solicitor General.—One of them has been opened, gentlemen, and you will have evidence before you of what it contained.

Ruthven.—This is the string Bradburn had tied round him; these are two candlesticks; these are the six ball cartridges Bradburn had in his pocket.

Lord Chief Justice Abbott.—If you could keep by themselves the things found in Cato-street, it would be convenient. [*The witness handed in several pistols, swords, and a knife.*]

Mr. Solicitor General.—From whom was that knife taken?

Wright.—I took it from the stout man in the stable.

Lord Chief Justice Abbott.—I wish we could have put together the things that were found in the loft in Cato-street.

Rathven.—There is a rope ladder that was found in the loft.

Mr. Solicitor General.—Were there any more things in Cato-street?—Not that I am aware of; the soldiers had some.

Have you those which the soldiers had?—The soldiers had them themselves; they marked them, and will produce them, themselves.

Mr. Solicitor General.—It is not necessary for us to examine the soldiers; my learned friends do not desire that; take them from the soldiers.

Witness.—This is the pistol fired at serjeant Legg.

Lord Chief Justice Abbott.—Then that is not found in the loft?—No, my lord.

Mr. Solicitor General.—Was any thing more found in the loft?—Yes; these pikes and a pistol [*producing them*].

Where was this blunderbuss found?—In the loft.

Where were those pikes found?—In the loft.

Have you counted how many there are of them?—I have not in that parcel; there are six in one parcel.

Mr. Solicitor General.—Some of them are bayonets, and some are sharpened files; about one-third are files, and the rest are bayonets; the jury will have the kindness to look at the handles; there is a screw apparently made to screw into poles?

Witness.—This is the ball and powder taken out of the arms; this was taken in the loft [*handing in a musket*], these were taken in the loft [*handing in a bayonet, another pikehead, half a dozen more pike heads, two pistols and swords*].

Was this sword taken in the loft?—Yes, it was, and here is a belt formed for the purpose; that small pistol was found under a ladder in the stable.

Was that carbine found in the loft?—I am not quite sure as to that.

Lord Chief Justice Abbott.—It is not very material in the production of them, whether they were found in the loft or taken from the persons of the prisoners, in the loft.

Witness.—They were all taken in Cato-street.

Mr. Solicitor General.—You have given me what were found in the loft; will you give me all the things that were found in Cato-street, whether in the loft or on the persons of the prisoners?—Those pike staves were found in the loft over the stable; but Flannagan can speak to them. [*One of the pikes was screwed into a handle.*] That [*a blunderbuss*] was found in the stable.

Produce any that were found on the persons of the prisoners?—A small blunderbuss and a sword were found on Davidson.

And any thing more?—Not upon him; these were found and brought to the office, having been taken in the premises of a person of the name of George, who was apprehended [*handing in a musket and other arms*].

We have nothing to do with them; take them away.

This is the one that Muddock took from Wilson, that he fired at him as he went in.

[*Three or four more pistols handed in.*]

Will the soldiers, each, recognize those they took?—Yes.

From whom were those belts and bag taken?—Davidson; those two bags were taken from Ings, and that belt and the case containing some powder.

Now give us the knife? [*It was produced.*]

The handle of that is covered over with wax-end?—It is. This bag [*producing it*] was taken from Wilson, and that sword from Wilson. I beg pardon, the knife and the sword were taken from a man that got away that he cannot identify, the bag was taken from Wilson.

You have now produced all that was taken in Cato-street?—Yes, I have.

Now produce what was taken at Brunt's lodgings? [*The witness produced two baskets and an iron pot, and took the articles out of one of the baskets.*] That leather bag contains balls.

That is one of the flannel bags filled with powder?—Yes.

They are all about the same size?—They are much about; there is another one filled, and this empty.

Show some of the fire balls?—This is one, made of tow dipped in tar [*producing it*].

Show one the grenades?—This is one [*producing it*].

They are the same as the grenades taken at Cato-street?—Yes. Here is another basket not done up in a handkerchief, which seems to contain the same sort of things; these are all of a sort [*producing them*].

Fire balls?—Yes.

That is the iron pot of which you made mention?—Yes.

Is there any appearance of pitch and tar having been boiled in it?—Yes, there is.

Now produce those that were taken at Tidd's lodgings?

Tamton [*producing them*].—Here are 965 ball cartridges.

The box is quite full?—It is; there are five in each of these parcels.

They are done up in little parcels?—Yes; all in fives, with a ball in every one.

What is in that bag?

Rathven.—Those are the grenades.

Mr. Solicitor General (*To Tamton.*)—You examined that?—Yes; here are the bags, containing each a pound of gunpowder.

A Jurymen (*Mr. Goodchild.*)—You have weighed them?—I have.

Mr. Solicitor General.—That is all, I believe?—There are two dozen more of these [pike shafts].

That were taken at Tidd's?—Yes.

Are they of the same sort as those upon the table?—Exactly the same.

They appeared to have been recently cut?—Yes.

John Hector Morison called again.—Examined by Mr. Attorney General.

Look at that sword, do you know that?—Yes.

Is that the sword which you sharpened for Ings?—Yes, the first one.

Are you quite sure of that?—Yes; there is a mark on the blade by which I know it.

Serjeant Edward Hanson sworn.—Examined by Mr. Gurney.

Are you a serjeant in the Royal Artillery?—Yes.

Have you examined one of those grenades produced to you at Bow-street?—I have.

How is it composed?—The bottom of it is a tin case about three inches long, and then, projecting about a quarter of an inch, there is a tin tube brazed in. You see the outside of it with composition to fire off the powder.

This tin is a kind of carcass?—Yes; it contained three ounces and a half of gunpowder.

What is the priming in the tube?—It is a composition saltpetre, as far as I can ascertain, powder and brimstone.

Over the tin what is there?—It is pitched just at the end of the tin.

What is wrapped over it?—Rope-yarn entirely round it.

Is there any thing fastened in the rope-yarn?—Next to the tin there is a body of oakum about an inch thick, and it is cemented then with tar and rosin mixed up together to make it fast. It is very fast, and will not peel off.

Do you then find any pieces of iron?—There were twelve pieces of iron planted round one that I opened, in different directions regularly round.

What time would it take from the lighting of the fuse before the grenade would explode?—I cannot exactly say; I suppose about twenty or thirty seconds: the tube was something better than three inches:

In about half a minute?—Or scarcely so much.

If one of them were to explode in a room where there were a number of persons, what would be the consequence?—It would do a great deal of damage; it would be very destructive.

Those pieces of iron would fly about?—Yes.

Like so many bullets?—Yes.

Take that into your hands: does it appear to you to be similar to the one you opened?—Yes, the very model.

Take your knife and open that.—It will take a long while to open it.

A Jurymen (Mr. Aldersey).—The jury wish to have it opened.

Mr. Attorney General.—By all means, gentlemen. [One was taken to pieces in the presence of the Jury.]

Mr. Gurney.—What are those you have come to now?—Fire nails, cart nails.

A Jurymen (Mr. Aldersey).—It is what fastens on the tire of the cart wheels: some appear to be old and some new.

Witness.—This is an old black stocking.

Mr. Gurney.—All that tightness renders it the more effectual?—Yes, here is another stocking, and then we come to the tin, the carcass [the witness opened the tin case]. Here is the powder in it, and it is very good too.

A Jurymen (Mr. Aldersey).—Do you consider that good gunpowder by its granulations?—Yes, it is very good.

Mr. Gurney.—Take into your hand one of those we call fire-balls; have you examined them also?—Yes, I have.

What appears to be the composition of them?—It is oakum, tar, and stone-brimstone pounded; may be there is rosin.

A Jurymen (Mr. Aldersey).—There is no killicrankie and refuse of the rosin, is there?—Yes, there is.

Mr. Gurney.—If one of them was lighted, and thrown into a barrack or a building; would it set it on fire?—Yes, it would be sure to set it on fire: nothing could put it out as long as there was any of it left.

How long would it burn?—Three or four minutes.

It would set wood on fire?—Oh yes; if it fell on wood it would set it on fire.

And if it fell on straw, it would set that on fire more easily?—Certainly.

Mr. Attorney General.—That, my lord, is the case on the part of the Crown.

DEFENCE.

Mr. Curwood.—Gentlemen of the Jury;—Had it been permitted to me, consistently with my own sense of moral and professional duty, to have declined the arduous task which is now before me, I had not stood here to address you upon the present momentous occasion. But, perhaps it is one of the brightest attributes of our profession, and which we the members of that profession think redounds to our greatest credit, that we are not at liberty to refuse our assistance to persons in the situation of the unfortunate man at the bar. No man can feel more deeply impressed than I do, with a sense of the very great weight of the arduous task I have to perform. I feel that the unfortunate prisoner has a right to demand from me to do my duty, boldly and fearlessly, unawed by any consideration of the power of government, who are his prosecutors, and unseduced by the

allurement of hope in conciliating their favour. I feel also that I have a sacred duty to discharge to my country, which is, to render my best assistance to the prisoner in the administration of the law, as relating to his case, and not—if I had even power or ingenuity enough to effect it—to attempt to pervert that law, or to defeat the purposes of justice. I also feel that I owe this to my own fair fame, which was my only inheritance, and is my best possession.

With those feelings pressing me down so as almost to unnerve me, I hope I may say that I look for assistance with humble confidence to that Power, which, however men may disregard in the times of prosperity or of levity, yet, in distress and in difficulty, and in the moments of trial, we all look to for consolation and support.

It is fit that upon an occasion of this sort, you should know something of the man who addresses you. And although I readily admit that for a man to speak publicly of himself is usually an arrogant vanity, yet, as I am anxious that those arguments which I may address to you, should at least have all the weight that they may intrinsically deserve, I am desirous you should know that I have no bias on my mind to impel me aside from the even path of my duty. For it is not to be denied, that this unfortunate transaction arises out of a state of things in our country, which we must all lament and deplore; and it is equally true, that men will have prejudices on certain points connected with this prosecution, it having relation to certain political transactions, upon which various and opposing feelings are widely diffused. For myself, though I cannot deny as an Englishman that I have feelings on certain points of government, yet I never enrolled myself with any political party. I never attended public political meetings in my life, so that I stand unwarped by party spirit. I am equally as free from bias on the other hand, for, with respect to government, I never received either in or out of my profession the slightest favour, and none have I reason to hope for or expect, so that, looking into my own breast, I have no motive there to influence me but that of doing my duty, and that I will endeavour fairly and honestly to perform.

The weight of this duty both to my learned friend and myself is not a little increased by the lateness of the moment at which we were called upon to execute it. Not until Thursday night was it that I received instructions in this case, or knew that I was to be called upon to defend the prisoner. In that short interval, I have had to prepare myself to meet the first talents at the bar, long and sedulously employed in considering and maturely adjusting every debateable point, aided with all the support that the wealth, the power, and the influence of government can give them: while, on the contrary, I have had scarcely a day's notice to argue before you whatever might arise out of this very important case.

With the attentive ear which (as it was my duty to do) I gave to Mr. Attorney-general in opening this case, I could not fail to observe, with some degree of surprise, that he did not state to you precisely what were the points you were called upon to decide. He indeed stated to you that this was a prosecution for high treason; but he gave you no precise statement of the exact issues you were to try. He dwelt much on that which I must and do admit, constituted great moral guilt on the part of the prisoner at the bar; but he did not state to you precisely what was the guilt he imputed to him by the present indictment. Now, there is unfortunately mixed up with this transaction a great deal which must necessarily make a deep impression on your minds;—there is a great deal of guilt, but take this with you at the same time, that there are other indictments upon which that guilt will probably be tried; and whatever your opinion may be of the moral guilt of the prisoner at the bar, if you, upon a review of the evidence, shall not be of opinion that he has committed the precise offence charged in this indictment, whatever your feeling of his moral guilt may be, it will be your bounded duty upon this indictment to pronounce a verdict of acquittal. It therefore has become my duty to state to you the precise issues which you have to try. It is not merely a question of high treason, but it is a question of a particular species of treason. And although the indictment was very long, and contained a statement of a great many facts, which in the language of the law are called overt acts, you are to understand they are only set forth as evidences to prove that simple fact in which the treason consists. They are given to you, to induce you to be satisfied of that short statement of guilt of which the substantive treason consists. The treason charged in this indictment, or rather the substantive treasons, are four. The first and third are upon a statute of the 36th year of the late king, for conspiring to depose his majesty from his imperial style and dignity. I do not know whether I use the precise language of the act of parliament, but in substance it is conspiring to depose his majesty. Second, for compassing and imagining the death of the king. Third, conspiring to levy war. Fourth, actual levying war. Two of these—compassing the death of the king, and the actual levying war, are treasons by the statute of Ed. III. The other two—conspiring to levy war, and depose his majesty, are made treason by the act of his late majesty's reign.

For now about four hundred years, Englishmen have always held in reverence, as a protection of their dearest rights, the statute of treasons of Edward the Third. There, among other treasons, it is stated that, whoever shall compass and imagine—to use the language of the statute—that is, contrive or intend—the death of the king, and by any overt or open act shall shew he had such intention, such inten-

son, proved by some open deed, shall be considered as treason: and by that statute also, actual levying of war against his majesty is declared a treason. There have at times, in subsequent unhappy or turbulent reigns, started up a variety of statutes creative of new treasons, which have always withered away in the good times of our constitution. There is, however, one other statute now existing, which makes not merely the compassing of the death of the king treason, but the conspiring to depose him from his state and dignity, and the conspiring to levy war against his majesty. These, therefore, are the four distinct questions you have to try.—First: Has the person at the bar compassed or imagined the death of the king? Secondly: Has he conspired to depose him from his imperial state and dignity? Thirdly: Has he conspired to levy war against the king? Or, fourthly: Has he actually levied war against the king? And on those points or one of them, you must be satisfied in the affirmative, before you can find a verdict against the prisoner at the bar.

Before I proceed to comment upon the probability of the evidence, and the credit which you will give to it, I would beg leave to call your attention to the course which has been pursued by the learned counsel for the Crown. The great mass of their evidence, if taken to be perfectly true, appears to me to go to the fact that there was a conspiracy to destroy his majesty's ministers. And it seems to me that my learned friend the Attorney-general relies upon that fact, as sufficient evidence to prove one or other of these substantive treasons. It strikes me, however, on the contrary, that you may believe the whole of that statement, and still that it may not be evidence of any one of the substantive treasons charged in this indictment. It does not follow as a matter of course, that the removing the administration of the king is to be followed by either the death or the deposition of the monarch. Let us go by steps. There is continually in parliament a party, I may venture to affirm, who think that the existing administration of the day is not a good one. When I say the administration of the day, I do not mean to apply that observation to the ministers of the present day exclusively, for I will do them the justice to say, that every administration that has preceded them have always found a party that have thought them a bad one; and every administration which shall follow them, will no doubt find a party to think them equally bad. It is clear, however, that there is continually in the parliament itself a party endeavouring to remove the existing administration, and I will give them full credit for believing that it is from a conviction that if they were removed another would be found whose services would be more beneficial to the country. It follows, therefore, that the mere removal of the administration of the day is not considered as necessarily involving either the death or the deposition of the monarch; and

the persons so desiring will not necessarily be involved in the crime of high treason. If the mere removal of the administration is not attended with those consequences does it the more follow, because that removal is to be effected by force or with violence? Men who are desperate, if they cannot accomplish that which they desire by fair means, sometimes resort to foul: I do not mean for a moment to palliate the guilt of assassination, but I contend that you are not to take it as a necessary consequence, that the removal, nay the death or destruction of the whole administration, involves in itself necessarily either the death or the deposition of the king. If you should be of opinion, that the assassination of ministers, horrid as it is, does not necessarily involve that consequence, then, I contend, the evidence given upon this occasion does not support the two first substantive treasons laid in this indictment.

There are two other treasons alleged in this indictment: the one is, conspiring to levy war against his majesty in his realm, and the other is the actually levying war. Now see whether the evidence affords you satisfactory proof either that there was a conspiracy to levy war, or that the act done amounted to an actual levying of war. In the detail which has been given of this transaction, more particularly the very long detail by the first witness Adams, and who in fact proved the whole case, my learned friend the Attorney-general found there was so much ridicule in his statements, or rather so much to be ridiculed in the transaction he related, that he felt the observations necessarily arising upon that man's tale would throw discredit upon the whole of his testimony, particularly when coupled with the infamy of his character. To obviate this, he said, I am obliged to call an accomplice, and by the law an accomplice is a competent witness; if an accomplice could not be called, there would be impunity for conspiracies, and all secret crimes. I never meant to deny that position of law, as stated by the learned Attorney-general, but I say the evidence of an accomplice always has been, and always must be, received with the greatest caution and jealousy; and if that caution and jealousy is to be applied in any case, it is more particularly to be applied in a case of high treason, where the law itself has thrown the strongest guard round the subject, and by positive enactment declared that he shall never be found guilty but on the oaths of two credible witnesses.

A very able writer, baron Montesquieu, has said, that where the laws of treason are undefined, there can be no liberty: tyranny must of necessity be the result. And that observation is equally true, if, where the laws of treason are well defined, juries do not most righteously and strenuously support that definition. You cannot do that if you suffer any feelings of moral guilt to influence your minds, to pronounce a verdict because you may think men

guilty of very enormous offences, unless you also think them guilty of that precise specific crime with which they are charged.

In treasons such as here charged, an accomplice, says the learned Attorney General, is a necessary witness. It may be so, but though he is a necessary witness, he is not of necessity to be believed in all he says. The more atrocious the guilt in which he steeps himself, the less worthy is he of credit; and if a most atrociously wicked witness were to come forward to tell you a tale, not only improbable, but ridiculous in itself, I think you would act most unwisely, indeed, if, upon such an absurd tale told by such a witness, you were to take away the life of man; nay, you would be hardly warranted in plucking a feather from a sparrow's wing. I know it is no uncommon thing, that those who lend themselves to crime betray their companions in guilt, but there is something so odious in all treachery, that he who betrays associates even in guilt is regarded with an additional degree of abhorrence, and the mind recoils from him as a being unworthy of any credit, as one who, to public crime, adds the last sacrifice of breach of private confidence. And you will invariably find that the man who becomes the informer is the most worthless of the whole band: for bad as his companions may be, still there is some principle of honour, there are some remains of social duty, which keep them true to each other; but the last dregs of honour and feeling are drained from the heart of that man who adds to their common crime the infamy of becoming the seducer and betrayer of his companions. Hence it is, that, anxious to gratify his employers with important intelligence, all the design that he represents as originating from others, he himself is the man to seduce them into; and every one of his own base propositions he carries to his employers as the settled resolves of his companions. Although I am sorry to say I have not ample evidence, in this case, of the conduct of the spy, and informer, yet I do not know that I shall not be able to prove in evidence to you, that the man who was the informer of government, instead of giving information of that which the other men had been doing, was himself the man to goad and incite the unhappy prisoner to every act of violence and outrage: that when he (the witness) made a wild proposition which was rejected, that proposition he carried to his employers, not as a rejected proposition of his own, but as an adopted measure of his comrades, and of which he was merely the informant. Gentlemen, let no such man's evidence be trusted.

Now, bearing these observations in your mind, view the evidence as given by Adams to support the fact of a conspiracy to levy war: lay out of your consideration, for the moment, all that which relates solely to the assassination of his majesty's ministers; and consider the evidence as given by him, in support of the substantive allegation of treason, that being a

conspiracy to levy war against his majesty in his realm. You have, to garnish the case lying before you, an affected display of rusty sabres, broken pistols, and a great many other things. You see the arms which lie before you, but recollect the purpose to which you are required to believe they were to be applied. Here is the whole arsenal of the conspirators: with this they were to do—what? to overthrow a mighty empire. You have here all the preparations: all the materials of the war are before you: and now, what is the statement of this man? As to the plan of operations to be pursued by these formidable conspirators, he says, that he attended various meetings from the 4th of February, I think, once and twice a day down to the 23rd of that month (one or two meetings more or less will not be material), in which was frequently debated the assassination of his majesty's ministers, and the destruction of the government. I was led to make the same inquiry upon the cross-examination, which was made, it appears, by one of their own body (Palin), and who seemed to me to speak with some degree of sense. He is represented as saying to them, "you have many great objects in view, but where are the men to come from?"—At one and the same time, his majesty's ministers were to be assassinated!—a detachment were to go and take possession of two cannon in Gray's-inn-lane! another detachment were to take possession of six cannon in the Artillery ground!—all the out-ports were to be taken possession of! Brighton was more particularly to be secured by a force!—the Mansion-house was to be taken as the seat of provisional government!—And what is the force to do all this?—An army that, counted to the utmost expectation, was forty men!—an arsenal of a few old sabres, pikes, and pistols!—an exchequer of six shillings and a reputed one-pound note! Who were the men to manage this machinery? with the exception of one (Thistlewood) a parcel of mechanics of the lowest orders in society! These were the men, and these were the means, to "twist this rooted empire from its base"—To depose a king living in the hearts, and guarded by millions of faithful subjects—To destroy a government protected by myriads of bayonets—To exhaust a treasury into which is flowing, not only the wealth of Britain, but the treasures of the East—This is a plan which you are required to believe was debated and adopted by men not declared lunatics. When an infamous witness tells you so incredible a story, can you or dare you take away the life of a man upon such testimony? If it were possible for you to do so, I should not hesitate to say, that I must believe your understandings as bewildered as is imputed to the prisoner at the bar and his associates.

Now, as to the other point, that of actual levying of war. With respect to levying of war, it is clear that every resistance of the civil power, or of the military power of the Crown is not a levying of war: what should be said

to be a war or not I hardly know how to define. I had rather read it from the language of a very eminent writer: he says, that "it is a question of fact to be determined by a jury." Lord Hale, in his Pleas of the Crown, speaking of this particular treason, says, "What shall be said to be a levying of war is a question of fact; for it is not every riotous or unlawful assembly of many persons to do an unlawful act, though, *de facto*, they commit the act they intend, that makes a levying of war, for then every riot would be treason, and all the acts against riotous and unlawful assemblies, as 13th Henry 4th cap. 7.: 2nd. Henry 5th cap. 8.: 8th. Henry 6th cap. 14., and many more had been vain and needless, but it must be such an assembly as carries with it *speciem belli*, the appearance of war." Now, did this assembly carry with it *speciem belli*, or the appearance of war? He goes on, "as if they ride or march *verillis explicatis*, with unfurled banners" (is this marching to attack the king's troops with unfurled banners?) "or if they be formed into companies or furnished with military officers," were these formed into companies, or furnished with military officers? The only military man among them appears to have been a disbanded soldier, and the only purpose to which he was to be applied was, to be the destruction of his majesty's ministers, which, I contend, was not a levying of war. Then he says, "or if they are armed with military weapons, as swords, guns, bills, halberds, pikes, and are so circumstanced that it may be reasonably concluded they are in a posture of war, which circumstances are so various, that it is hard to define them all particularly." Then, if it be hard to define all the circumstances of levying war, particularly being a matter of fact, can your own good sound understanding infer it from the facts in evidence before you? If you had been told a war had been levied against his majesty in this country, and the transactions in Cato-street had been narrated, would not you have treated the thing as absurd and ridiculous? Where is the war? in a little back court! Where was the battle fought? in a stable! Where were the traitors encamped? in a hay-loft! How were the traitors armed? with a few rusty swords, and broken implements of war. Putting it to your own common sense and understanding, can you upon your oaths say, that the prisoner at the bar is guilty of actually levying war against the king? You find that, in many of their meetings, these men who were levying war, as it is called, were afraid of the approach of the parish constables; that at one meeting in particular Thistlewood looked towards the door, and spoke low when he spoke of the west end job, as dreading the presence of the civil officer: on which one more bold than himself said, "we do not care for the traps," that is, for the parish constables, not for the king's troops: so that it is evident that these men were kept in awe by the dread of the mere civil force of the country.

If there is no levying of war, is there a conspiracy to effect that purpose? The only evidence you have of any such conspiracy comes out of the mouths of those three witnesses who are all implicated in guilt, and who, I say, are so far contaminated that they are not to be credited, because they all confess themselves guilty of a participation in a most horrid transaction, namely, a projected assassination of his majesty's ministers; the only evidence that relates to levying war comes out of their mouths, and even as they give the transaction, it is very doubtful whether any thing can be raised that might be considered as evincing an intent of levying war against the king, except indeed the proclamation which one of the witnesses says Thistlewood had penned. Why, if such a proclamation had been existing—if it had been to be found any where but in the wicked imagination of that witness, do you think it would not have been produced?—Would not the spy of government have secured a copy to confirm his tale? But what proclamation is it? Mark the absurdity of this supposed proclamation! "Your tyrants are destroyed; the friends of liberty are called upon to come forward; the provisional government is now sitting.—James Ings, secretary."—You are to take it upon the word of that man (Adams) that such a proclamation was framed. Do you suppose that Thistlewood is a man so absurd, that if he had entertained the designs they impute to him, he could have penned a proclamation of this sort? No, gentlemen, this witness some how or other thought it necessary to have a piece of evidence of that sort to support his absurd tale of consultations to levy war against the government; and this was the best piece of evidence that his stultified imagination could produce.—A provisional government!—Who was at the head of it?—Nobody! Who are the officers under it?—Nobody! How is it to be managed?—No one can tell! Where is the provisional government sitting?—You are left to find that out. All which the world is told is—that Mr. Ings, the pork-butcher, is the secretary of the new provisional government. Gentlemen, common sense must guide you in your deliberations upon these matters. You will not lay aside your knowledge of mankind, and believe a story entirely because it is sworn—still less will you believe it when it comes from such contaminated sources. You will apply your knowledge of life and human affairs, and if the story be told you, nay if it be sworn by a credible witness, if it is beyond all human credibility, you will spurn it with contempt, as a base design to impose upon your understandings, and mislead your better judgments. Does this absurd tale derive any additional credit from the ostentatious parade and display of rusty muskets, and broken sabres, and pike heads, and gunpowder? Why, notwithstanding this formidable materiel of war thus spread out to appal you, I will undertake to say, that there is not a populous alley in the city of

London, that would not have furnished arms and men, that would have defeated the whole of this gang of conspirators, at least the whole that we have heard of in evidence, and terminated this dreaded civil war in less than half an hour. Then can you seriously believe that it was intended by these men to levy war against his majesty's government—whatever their intentions might have been against his majesty's ministers.

The subject resolves itself, at last, into these few short points. You will consider first, even should you suppose it to be true, that the assassination of his majesty's ministers was intended, whether that event of necessity implies that his majesty was also to be deposed, or put to death? If you do not think it follows of necessity (and there is not from the beginning to the end of this evidence a single word which points distinctly at the royal personage or his family, except I think that Thistlewood is stated once to have said, that the present family have reigned long enough; with the exception of this short piece of evidence, there is not one single word that has a hostile aspect to the royal family), whatever may be your feeling with respect to the projected assassination, if you think it does not necessarily involve the other point of the deposition of the king—however greatly you may abhor the men who could cherish so horrid a purpose in their minds, you ought not to find them guilty of treason, upon those two first counts, which charge their intent to be the death and deposition of the king. And if you think the story of the accomplice too ridiculous to be believed, or himself too infamous to merit credit at your hands, when he relates the supposed conspiracy to levy war, you must also find them not guilty upon the count which charges them with that substantive treason. And if, with respect to the remaining charge of actually levying war itself, you think that too absurd to be entertained for a moment, then you must acquit them of that also.

I do not know that I can say more, and I will not waste your time, and my own strength, already sufficiently exhausted, by two long days close attendance to the evidence of this unparalleled case, by using words unnecessarily; but let me implore you to do your duty strictly, according to the rigid rule of law: consider what is the law of the land, and step not aside either to the right hand or to the left; but mark only the issues and the treasons you have to try. I implore you to do it, not only for your own sakes, but for the sake of our common country; for, if ever juries suffer feelings of indignation to warp their opinions, and to induce them to find men guilty of charges which are not proved, because they feel or think them guilty of other charges which are not before them, there will be no safety hereafter for the life of man. If this prisoner has been guilty of other offences, there are other indictments against him upon which he must answer for those offences, and should the

facts be there proved against him, the consequence will be, that he must suffer the penalty of his crime; but on this occasion do not find him guilty of high treason, because you may think him worthy of death for another deed. No, not even though that deed may be a plan of murder and assassination.

Mr. Gurney.—It is usual to state the sort of evidence which is intended to be called, that it may be seen whether it is receivable.

Lord Chief Justice Abbott.—That is the usual practice certainly.

Mr. Curwood.—Gentlemen, I meant to state that I should call a witness to show the little credit due to these witnesses, who will state that a great many of the instruments and weapons now lying before you, were brought to the dépôt by Adams, the accomplice, who is called, and by Edwards, the accomplice, who is not called: that on the 23rd of February they were taken away by them, and afterwards brought back again by a boy from them, and placed where found. The inference I draw from this fact is, that it is a confirmation of what I stated to you before, that these men who are now the accusers, were themselves the fabricators of the plot, and these arms were so placed by them to confirm their intended testimony.

EVIDENCE FOR THE PRISONER.

Mary Barker sworn.—Examined by Mr. Adolphus.

Are you a daughter of either of the prisoners at the bar?—Of Richard Tidd.

Did you live with your father?—Yes.

Do you remember at any time the police officers coming and finding any boxes and things there?—Yes.

What day was that?—On the 24th of February.

At what time in the morning did the officers come?—About half-past eight I suppose.

How long, at that time, had those things been in the house before the officers came?—About a quarter of an hour.

What did they take away?—I am sure I cannot say: I was in such a situation I cannot speak to it.

Was there a box?—Yes; there was.

What was in it?—I cannot say.

Did they take some things like these? [*pike staves.*]—Yes.

How long had they been in the house?—They were brought there that morning.

Do you know who it was that brought them?—No.

Was it any person in your father's employ, or that you knew of as being employed by him?—No.

He had been taken into custody, we understand, the night before?—Yes.

Had you seen him since he went out the night before?—No.

Do you know a person of the name of Adams?
—Yes.

Had you seen him at any time before at your father's?—Yes.

Do you know a person of the name of Edwards?—Yes.

Had you seen him there?—Yes.

Had Edwards been there before your father was taken up?—Yes.

Had he been there seldom or often?—Often.

If I understand you rightly, those things that were taken away by the officers, had not been in the house above half an hour, before they came and took them?—No.

Had you seen them there before the day when the officers came?—Yes; I had seen similar things before.

To the best observation you could make upon them, do you believe them to be the same things or different?—The same, I think.

Who took those things, which you say you think were the same, away?—Edwards took a part.

Who the other part?—I do not know.

When was it that Edwards took that part away?—On the Wednesday.

You say some other person took the others away?—Yes.

Did your father take any of them away?—No.

Who took the other part away?—I do not know.

What part did Edwards take, the box or the staves?—He did not take away any box.

The box was not taken?—No.

What was taken?—Some things that I have understood since were grenades, and likewise some powder.

Was the box there all the time?—No; the box was brought a day or two before the time my father was taken.

Do you know who brought that?—No.

Was it brought in the state in which it afterwards remained?—Yes, it never was uncorded.

You do not know who brought it?—No.

You have talked of things called grenades; were there any larger than others?—There was one larger than the others.

Who brought that?—Adams.

What was Edwards, do you know?—No; I did not know at the time he used to come to my father's; I have heard since he was a modeller.

Mr. Attorney General.—I have nothing to ask you.

Edward Huckleston sworn.—Examined by
Mr. Curwood.

Do you know a man of the name of Dwyer?—Yes.

Have you seen him here to-day?—No, I have not, for I have not long come.

How long have you known Dwyer?—For some years.

Have you known him intimately?—I have known him intimately, by using the same public-house as he does, and a few friends.

Do you know enough to say, whether he is fit to be believed upon his oath?—No; I do not think he is fit to be taken upon his oath.

Edward Huckleston cross-examined by
Mr. Attorney General.

You have known him by meeting him at the public-house?—Yes, at the public-house where I have supped.

That is your only knowledge of him?—I have seen him with a great deal of money; knowing that he seldom or ever did any work; he was a bricklayer's labourer, and seeing him always hulking about, and with such a quantity of money, I wanted to know how he came by it; I said I was poor, and he asked whether I had not got any money, and he told me if I would go with him he would put me in possession of many a bright pound. I went with him to Hyde-park, and he told me to keep within hearing, and he would soon shew me how he could go on, that he would watch a gentleman out, and to catch hold of him, and that he would say he was an unnatural gentleman, and that then I was to come up as an officer, and draw him towards a watch-house, but not to take him to a watch-house; I was struck with the idea, and shunned his company.

When was this?—About three months ago; and he has said he got seventy pounds at a time, by doing so, and he jawed me as being a coward: the next night I met with him, but I did not wish to have any thing to do with it; he said that he got 70*l*. of one gentleman in Saint James's-street, by only catching hold of him by the collar.

Where did you meet with him the next night?—At the Rodney's-head, in Chandler-street.

You have met him frequently since at the public-house?—Yes; but I never would have no more goings with him, for I told him of the dangerous consequence, his brother was transported from this same place for the same offence; and he said, aye his brother did not know how to general it as well as he did, his brother was transported with another young man for fourteen years, but he got away.

When did you mention this to a magistrate?—Why, I ought to have done it; but I was afraid, because there were a great many Irishmen round our place, and I was afraid I should fall a victim to them, and I thought I had better keep out of his way, and not go into his company any more.

But you were in his company afterwards?—No.

Not at all?—No, only meeting him in the street, and asking him how he did, and then going away.

You spoke to him?—Yes, just the time of the day, and so on.

What are you?—I was brought up a shoemaker, but I am articled to a cow-doctor.

Where do you live?—No. 15, Little Portland-street, Oxford-street.

How long have you been apprentice to the cow-doctor?—Why, ever since last June.

Who is the cow-doctor?—Edward Skillet.

Where does he live?—At No. 4, Newman-mews, he keeps that as an hospital for cows and horses.

As you were afraid to mention this to a magistrate, when was it first you summoned up courage to communicate it to any person?—The first person I communicated it to was my brother.

When was that?—About a week ago, when the list was in the paper, and I said that man I knew was a bad character, and with that they subpoenaed me here.

You did not even communicate it to your brother till a week ago?—No; but there were a great many of them in company, and a great many that used that house, and I was afraid, as my bread depends upon going round to the cow-keepers, doctoring, that I should get ill-treated.

So much afraid that you would not even mention it to your own brother, till a week ago?—No.

Are the same Irishmen living in the neighbourhood, as were at that time?—No, some of them are gone away, then I summoned up courage enough to mention it.

They did not go away, I suppose, till about a week ago?—They have gone away lately.

And that induced you to summon up courage to mention it to your brother?—Yes.

How long ago is it that this communication was made by Dwyer to you?—I may say, about two months ago, I cannot say within a week or two.

I thought you said three months?—It may be between two and three, I cannot say exact; I have other business to mind, instead of such business as that.

You have other business to attend to?—To get my living.

And this made so little impression upon you you cannot say whether it was two or three months ago?—No, I did not pen it down.

You did go with him to the park?—Yes; but when he told me, I was horror-struck, and got back: I thought the best way was to get back as soon as I could, lest my own character should be injured by it.

Where does your brother live?—No. 2, Bulstrode-mews, Mary-le-bone-lane.

Edward Huckleston, re-examined by Mr. Adolphus.

While the matter was a complaint of yourself, you mentioned it neither to magistrate, nor your brother, nor any body else?—No.

Lord Chief Justice Abbott.—I understood you to say, that he mentioned this matter to you first at the public-house?—Yes, he did.

Did you go with him that same day that he mentioned it, or another?—I went that same night with him up there.

Mr. Gurney.—Do not leave the court at present.

Joseph Doane sworn.—Examined by Mr. Adolphus.

Have you any public employment or situation?—I am called court reporter.

Do you prepare for the newspapers the accounts that are given of the movements and intended movements of the nobility?—Of the court.

Do you prepare them for one paper in particular, or send them to all the papers?—To six papers.

Is the New Times one of the six?—Yes.

The Morning Post, Chronicle, and so on?—Yes.

Do you send them to all the papers at the same time without partiality?—All alike.

There is an announcement in that day's New Times, the 22nd of February last, under the head of Court Intelligence: did you prepare that or how much of it?—As far as relates to the Royal Family, I did.

What is the next article to that?—"The Earl of Harrowby gives a grand cabinet dinner to-morrow at his house, in Grosvenor-square."

Did you prepare and send that?—I cannot speak to that at this great distance of time; but from the wording of it, it is my impression that I did not.

What is there in the wording of it that induces you to think you did not send it?—It says "grand."

Did you ever put such a word into that announcement at all?—No; because I know that the cabinet dinners are always the same.

There is no particular grandeur attributable to one as distinguished from another?—No.

Andrew Mitchell sworn.—Examined by Mr. Curwood.

Have you the manuscript of this article, "The Earl of Harrowby gives a grand cabinet dinner," and so on?—Yes.

Do you bring it from the New Times?—Yes, this is it. [producing it].

What are you?—I print for the New Times. Is that the original?—It is the original.

Mr. Curwood.—Let Mr. Doane look at it. (To Mr. Doane.) Is that your hand-writing?—No, mine is done by a manifold.

Mr. Curwood. (To *Mitchell*.)—How do you account for that?—This is the original manuscript we had: it did not come from Mr. Doane.

Had you any other manuscript but that?—I do not know whether Mr. Doane might send a duplicate, but that is what we printed from.

Mr. Gurney.—It is a series of fashionable annunciations. "Mr. Honeywood is arrived," and so on.

Mr. Curwood.—Mr. Doane, can you account for this?—No, I know nothing of it.

Mr. Curwood. (To *Mitchell*.)—From whom did you receive it?—From a person of the name of Lavenu, who is in the same way as Mr. Doane.

John Whitaker sworn.—Examined by
Mr. *Adolphus*.

Have you searched in the newspapers published on the 22nd of February, for the article, "Lord Harrowby's dinner."—Yes, I have.

How many?—Eleven. I will mention them; The Times; the British Press;

Lord Chief Justice Abbott.—Was not Monday the day that was spoken to?

Mr. *Gurney*.—No, my lord, Tuesday.

Witness.—I searched from the 17th past that time all those days.

Mr. *Adolphus*.—Was there any such announcement in any of them, as that the earl of Harrowby was to give a grand dinner that day?

Mr. *Attorney General*.—It is not worth while objecting to this, but the proper evidence will be the papers themselves.

Mr. *Adolphus*.—Have you searched with a view to find this article?—I went to Peel's coffee-house for the purpose of seeing all the papers: the New Times alone had an account of the dinner to be given at lord Harrowby's on the 23rd, and that was in a paper on the 22nd.

Mr. *Gurney*.—We will call back Dwyer with your lordship's leave.

Thomas Dwyer called again.—Examined by
Mr. *Gurney*.

When you were here before, you were asked whether you knew any man of the name of Huckleston?—No, I do not.

Mr. *Gurney*.—Let that man stand forward. Do you know that man?—Yes, I have seen him, but I did not know his name was Huckleston.

Where have you seen him?—I have seen him in Oxford-road.

In a house, or in the street?—In the street.

Have you seen him in any house?—Not that I know of.

Did you ever propose to him to go out, and to charge a person with an unnatural crime, and to get money?—Never.

Do you swear that solemnly?—I do.

Did he ever go out with you to the park on such a purpose?—No, never with me in his life.

In January or February last, were you out of work? Out of your regular work?—Yes, I was.

Where did you go to work when you were out of your regular work?—I went to work at Mr. Elmore's.

Before you were at work at Mr. Elmore's, did you work at the parish mill?—Yes, I did.

A mill in your parish worked by men who come to claim assistance from the parish?—Yes.

Did you receive money from the parish

while you were so working at the mill?—I received 3s. a day while I was at the mill.

How many days did you work at the mill?—Twice in different weeks.

Have you a wife and family?—A wife and three children.

Thomas Dwyer cross-examined by
Mr. *Adolphus*.

Upon your oath, when you were coming into that place this moment, did not you at the sight of this man say "Oh, Huckleston!" before you got into that box? What I am asking you is before my learned friend put the question to you; did you not say directly you saw him, before any question had been put to you "Oh, Huckleston!"—I did not.

Mr. *Adolphus*.—I was told you had.

Mr. *Gurney*.—I can vouch for it, that it was on my putting the question, he echoed my words.

Mr. *Adolphus*.—You say that now you see his face, you know him?—Yes.

What name did you know him by?—I did not know his name at all.

How often have you seen him?—Very often. He resorted at the end of James-street, and I lived in Gee's-court. There were a parcel of chaps that used to resort about that place, but he was never an associate of mine.

Lord Chief Justice Abbott.—James-street is near Gee's-court?—Yes, the next turning.

Mr. *Adolphus*.—Did you ever see him but in the street, upon your oath?—I have seen him at several places.

What places?—I have seen him in several parts of the street. I have seen him several times.

That is any thing but an answer to my question. Have you ever seen him any where but in the street?—Yes, I have.

Where?—I have seen him in Hyde-park.

Where else?—No where else that I know of.

In what public-house have you drank with him?—I never drank with him in a public-house. I used to resort to the Rodney's-head in Chandler-street, but I never knew him to resort there.

Have you been in the habit of resorting there lately?—No, only when I can afford a pint of beer sometimes.

That is the house you go to?—Not particularly.

Why do you fix upon the Rodney's-head?—Because it is a place that my countrymen in general resort to.

Were you in court when that man Huckleston was giving his evidence?—No, not that I know of.

Where were you fetched from now? Were you out of court, or in court?—I was out of this court? I was in the witnesses room.

Then did you not hear him give his evidence?—No.

Will you say, upon your oath, you have not repeatedly met him in a public-house?—I will.

That you have not what?—That I have not repeatedly met him in a public-house.

How many times do you call repeatedly?—I do not remember ever to have seen him in a public-house.

Will you swear you have not seen him in a public-house?—I know I have not for some time.

Then you have at some time?—I will not swear that I ever have.

Will you swear you have not seen him in a public-house?—It is hard for me to do that.

I think it is. Will you swear you never saw him in a public-house, as you swear to having seen him in several streets?—I do not know how I can do that.

Nor I. I ask you, will you swear you have not seen him at the Rodney's-head;—Yes; I have not seen him in the Rodney's-head.

That you never were with him at the Rodney's head?—It must have been some length of time ago if I ever did such a thing.

Will you swear you have not been with him there within these three months?—Yes, I will.

Within four, will you?—I cannot say; I cannot recollect that.

Was it before or after Christmas then?—I cannot say.

Do you mean to swear it was since Christmas or before Christmas, or three or four months?—Since Christmas.

Will you swear that before Christmas you were not with him at the Rodney's-head?—I do not recollect that I was.

Will you swear you were not?—No, I cannot swear that, because I do not bring my recollection to being at the Rodney's-head with him at any time before Christmas, nor after neither.

You will not swear you did not?—He may have been there and I not take notice of it. It is a house that is quite full on-Saturday and part of Sunday.

You are quite positive you never walked with him from that house to any other place?—I am positive.

On what occasion did you see him there?—On a Sunday.

What part of the day was it?—The forenoon, or it might be the afternoon, for aught I know.

How came you to fix on having seen him in the park?—He was a man I never associated with at all.

How came you to fix on Hyde-park?—I might meet a thousand there.

Therefore the more unlikely you should fix on any one; what made you fix upon him?—You asked me whether I saw him in any other place.

And therefore you fixed immediately on Hyde-park?—No, I did not.

Have you any particular reason for remembering having seen him in Hyde-park?—I have no particular reason, but seeing him the

same as any other spectators that might be going through.

Did you ever see him in Saint James's-park?—No.

The Regent's-park?—No.

But you did in Hyde-park?—Yes.

How long ago was this?—I cannot tell you the time.

I do not ask you as to the third or fourth of any particular month, but how long ago?—It might be before Christmas, or it might be after.

It may be before the flood, or it may be after?

Lord Chief Justice Abbott.—It cannot be before the flood.

Mr. Adolphus.—Not in human possibility.

Witness.—A thousand might pass by, and I take no notice of them.

You saw him at some time or other in Hyde-park?—Yes.

He is a man you do not associate with, and yet you remember seeing him there?—Yes.

On what occasion was it you saw him there?—I do not know on what occasion.

Nothing passed between you?—No.

Was it in winter or in summer?—I do not know; you say it must be either before or after Christmas, but I did not take notice of the time; it is impossible for me to tell the time.

Was it in winter or summer?—It must have been the winter.

A Jurymen.—Are you a bricklayer, or a bricklayer's labourer?—A bricklayer by trade; the man I worked for, I have worked for twelve or thirteen years, Mr. Smith of Mortimer-street, Cavendish-square; I have worked twelve or fourteen years for him, 22, Mortimer-street Cavendish-square, and Mr. Elmore and other gentlemen, in Piccadilly, and other places I could mention.

Mr. Adolphus.—My lord, I hardly know how to frame the request I am going to make to your lordship, but there is one solemn duty I owe to the unhappy man at the bar—if it be consistent with your lordship's duty to grant the request, I know I shall not ask it in vain, and if your lordship refuses I shall willingly acquiesce—it is a request that I may now have till to-morrow to consider this important and multifarious case?

Lord Chief Justice Abbott.—You wish to postpone your address to the Jury till to-morrow?

Mr. Adolphus.—Yes, my lord; I have no reason to ask it but from the total want of preparation in point of time.

Lord Chief Justice Abbott.—It must be the anxious wish of the Court that every assistance that can be rendered to a person standing in the situation in which the unfortunate man at the bar now stands should be afforded; whether if we were to hear you now we should be able to go through the whole case to-night, may be somewhat doubtful; my great diffi-

culty is as it respects the convenience of the gentlemen of the jury, but we ought not to proceed with haste, where the life of an individual is concerned.

*A Jurymen. (Mr. Aldersey).—*We are of opinion that our convenience is not to be considered at all in comparison with what may be the issue of this trial.

*Lord Chief Justice Abbott.—*Your expression is exactly that which I should expect from you. We have not yet arrived at the time at which in an ordinary case we ought to adjourn, but in the very peculiar case before us, and adverting to the fact mentioned by the counsel for the defendant, of the truth of which I cannot doubt, that it was not until a very late hour before this trial came on, that they received their instructions, perhaps the administration of justice may be better consulted, by allowing, at the request of Mr. Adolphus, that he may have time to consider his client's case.

*Mr. Aldersey.—*My lord, it is the wish of some of my co-jurors to have it ascertained whether Dwyer, whose credibility has been called in question, can be proved in any way to have mentioned it to major James, and the Secretary of State, what he states himself to have mentioned, how far he is or is not borne out in that.

*Lord Chief Justice Abbott.—*The Attorney-general will have no opportunity of considering that.

*Mr. Gurney.—*It is open to the prisoner to give any contradiction.

*Lord Chief Justice Abbott.—*Certainly, the prisoner may contradict that.

*Mr. Goodchild.—*Dwyer's evidence has been endeavoured to be shaken, and we wished to see whether there was any thing to corroborate him.

*Lord Chief Justice Abbott.—*Perhaps we had better forbear mentioning that subject; there will be an opportunity for all parties to observe on it, and for you, gentlemen, ultimately to decide.

[Adjourned to to-morrow morning nine o'clock.]

WEDNESDAY, 19TH APRIL, 1820.

Arthur Thistlewood was set to the bar.

*Thistlewood.—*My lord, I should be glad of the indulgence this morning which you were so kind as to allow me yesterday?

*Lord Chief Justice Abbott.—*Yes, certainly.

*Mr. Attorney General.—*In consequence of the wish expressed by the jury last night, that major James should be examined as a witness, I have procured the attendance of that gentleman in court, and he is now here. Your lordships know it is impossible for me on the part

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of the Crown to call him as a witness, his name not being in the list; but he is here ready to be examined, if the defendant's counsel wish it.

*Mr. Adolphus.—*It is certainly no part of my case to call a witness who is in the knowledge of the Crown, and is not named in their list. I cannot examine a witness unless I am apprised of his knowing something of importance; I therefore feel that though the Attorney-general does not mean to put me into an awkward situation, yet, as lord Ellenborough said, if you take a witness in that way you must abide by his evidence, which I do not think I should act right in doing upon this occasion.

*Lord Chief Justice Abbott.—*It cannot be expected, under these terms, that you should call the witness: whether he ought to be called on either side is another matter.

*Mr. Attorney General.—*Neither my learned friend, nor the defendant, can think that I mean to place my learned friend in an unpleasant situation.

*Mr. Adolphus.—*Gentlemen of the Jury;—I have to request your attention to the humble effort it is my duty to make on behalf of the unhappy man at the bar, and I cannot do so without first expressing my thanks to his lordship and you, for the kind manner in which you acceded to my request, to allow me time to make such preparation as was necessary. Under any circumstances the situation in which I am is distressing enough, but that distress would have been infinitely aggravated, if I had had to address you with a body fatigued, and a mind jaded by the mass of matter laid before you—with thoughts necessarily wandering to the different parts of the case,—and without time to arrange and simplify, even in the moderate degree I have in the few hours stolen from sleep, those thoughts which it will be my duty to lay before you.

It has been said that this is an anxious and important inquiry; truly, if ever there was an occasion in which the mind of counsel for a prisoner might sink almost into abjectness, it is furnished by the case now before you and the situation I stand in. The prisoner is, of all the men I remember tried before a jury for the crime of high treason, the most unhappy, and I may say, without meaning to alter the case of guilt, if guilt shall appear against him, the most unfortunate. I have known many trials in the course of my life on these subjects, but never saw one where a prisoner was so absolutely denuded of all countenance and support—so much thrown on the mercy and charity of those who would undertake his case, as the prisoner on the present occasion. To say that the prisoner has against him all the weight of office, the force of talent, and the influence of renown, is to say nothing but that he is indicted for high treason at the suit of the Crown; for the Crown upon such, and upon every other case, has a right to the best services of its best servants, and it would be most unjust to com-

plain of that which is merely incidental, and justly and properly so, to the situation in which he stands. But upon former occasions I have seen advocates of the highest celebrity, of the most established reputation, entering voluntarily into the cause of a prisoner; taking it for a long time beforehand, and methodizing and digesting every thing to be done; they have come to the combat prepared, in a considerable degree, to meet the talents, and to grapple with the case against which they were to be opposed.

Far different is the situation of this unhappy man, who, on the very eve of his trial, and then alone, obtained the feeble assistance I can give him. I never heard of his case till Thursday last; I was out of town on Friday, I had not my instructions till Saturday night, and I had to appear before you on Monday. I do not complain of this, but I deplore it—it is an unhappiness to which his deplorable case has subjected him, that the want of preparation and ability in me may prejudice him. Other prisoners in the same situation have been allied by party, connexion, or other means, with some considerable number of men of influence, weight, and reputation in the state. This poor man and his associates are deserted by every one; no voice is raised in their favour, no effort is made on their behalf; none has been attempted with my knowledge. I have not had the advice or assistance of any individual upon earth, save the solicitor, who has gratuitously undertaken his case; and so far from receiving any information to enable me to avoid difficulties, my information has been all comprised in the slight instructions this gentleman has collected, and thus I appear before you.

But there is another circumstance which presses still more heavily on the prisoner. In all the trials I remember on cases of this kind, and particularly the last I remember in this Court, the trials in 1794 and 1795, every prisoner who obtained his discharge from the accusation was set at liberty, and the inquiry ended with the question which was submitted to the jury. This man is so unhappily beset by the circumstances of his case that, if at your hands he receives an acquittal on this indictment, other indictments still await him;—an indictment for murder, an indictment for shooting under lord Ellenborough's act; and, in short, he is surrounded by all the perils that can involve any individual: indeed, it seems he is reduced to this melancholy choice, whether the office of the executioner shall end with the execution, or whether after that, his body shall be hacked to pieces, and disposed of at the mercy of the Crown, or be subjected to the knife of the surgeon.

If he be guilty, and I must presume there is ground for supposing he may be so, by the bills of indictment being found, he has no right to complain that the law is too hard; he must ascribe his desperate situation to his own fault; but, in the first place, I implore a total exclusion from your mind of every thought

arising out of other charges, or other circumstances; that can affect you in the decision of this case; and I entreat that you will consider him as if he were like any other prisoner on trial, totally exonerated from other imputations, and subjected only to the inquiry which brings you together to-day. It is difficult I know, but I expect it from your conscience and your justice; the Attorney-general made the same request of you, it becomes his rank in life, and is the profession to do so; it becomes his character as a man, a Christian, and a Briton, to make that request, because it is not in his office, or his disposition, to run down as criminal any of the subjects of the Crown, but to hold them up fairly to their country answerable for their crimes, or entitled to acquittal, as they are guilty or not guilty: still there remains this behind—a matter that has been disclosed to the public for a long time, which has been talked of with unreserved reprobation and detestation, from every mouth, is not so easily dismissed from the most correct minds, but that some taint of prejudice may still remain, some opinion, some unconscious whispering in a man's ear, from the internal suggestion, that this is the man about whom so much has been said, and it cannot be said without his being guilty of something; in short, the opinions of private life steal into our breasts; and it becomes me, therefore, most earnestly to implore you to resist every such suggestion, to refuse your ear to every such insinuation, and to view this case, as I am sure you are disposed to view it—to make a great effort so to view it—I mean as if you had never heard the name of this man before, and as if you knew nothing of him, but that which has been disclosed in this cause, and on which you must decide and give your verdict.

I have observed to you, that this is a case of infinite importance. I say of infinite importance;—to the prisoner—my learned friend the Attorney-general has put it because his life is at stake, but under his particular circumstances of less importance in that view than ever a trial for high treason was to a man. But it is important, to the state, to the present generation, and to their posterity, that this case should be decided, not on impressions against an individual, but on the fair results of the evidence offered, and upon a fair examination of the parts of that evidence, according to the most severe test by which evidence can be tried. It is of importance to posterity; for assuming this prisoner to be a bad man, if as against a bad man certain evidence can be received, and can find its way into the minds of juries, so as to procure a conviction, no man knows against whom the same sort of evidence will not be next produced—no man knows whose life may not be sacrificed—no man knows whose fame may not be destroyed; and property taken away by evidence which ought never to have had the credit of a jury, or perhaps the sanction of any court. This is the important point, on which it behoves us

to be particularly circumspect, when a bad man is before us. Such attempts are never made at first against those who have good characters, great friends, or the means of defending themselves; they are made on the poor and abject, and then as a precedent, it goes elsewhere to destroy others. This leads me to caution you; for it is not the value of this man's life (though God forbid I should undervalue human life), that stands upon this case, it is the value of the lives of others, and the safety of their posterity; it is the value of a precedent in a case of high treason, which is of more importance than any other case, it is of more importance for this reason, from the time that the kingly government began to be established on defined principles in this country, and to be curbed by regulations for the benefit of the subject, the law of treason has been guarded with particular vigilance by the legislature, and by the execution of that law with commendable anxiety by every jury who has sat on it; there never was any law so free from doubt or contradiction; there never were a set of records (taken all together and subject to exceptions only from the badness of certain times), so perfectly accordant; there never was a subject upon which so much vigilance, correct judgment, and care on the part of juries, have been exerted, as on that of treason. In truth, it is an awful case to discuss; in other cases the king is the prosecutor for the benefit of the public; but here the king in person, by his own officers, is arrayed against the subject; and it is therefore upon a jealous vigilance, lest the power and influence of the Crown—lest the natural love in every good subject, and his zeal and desire to preserve untouched the safety and the right prerogative of the Crown should be brought into play, to work oppression upon any individual so charged and inculpated; therefore, I say, this case is of peculiar importance, as all other trials for treason have been. It is necessary to observe a most steady and exact attention, and not to suffer prejudice to sway your minds, to receive one tittle of evidence that would not be admitted on every other occasion, and rather to lean to the side of the accused, if it comes to be a doubtful or measuring cast in your mind, than lean to the side of the prosecution, however you may be interested for the preservation of the throne, and for the prevention of all those attempts by which its authority may be impaired.

I have already stated to you, that this task of defending these prisoners has come to me as a forced duty in my profession; I have not sought it; I have not avoided it. I think that in a case like this, when an advocate is called on to exercise such talents as he has in the way of humanity towards unhappy persons like these—and I take it not on my own authority alone, but refer to that of others—I think it is his duty not to refuse the assistance required: I do not know that it is necessary, or always decent or right for advocates to press their own personal

opinions or politics into a case; but as I am going into an investigation of some length, it is fit I should say, that in the course of my life, I never have been in thought or act, assenting to any of those principles or combinations, by which the established constitution in church and state could be brought into danger. I was born a subject of the late king, I lived contented with my fortune under him, I am a faithful subject of his successor, I do not see the necessity of these agitations, and have never lent myself to any of them: whether I had or not, in another case would not be of the smallest importance; but standing here as the voluntary advocate of these prisoners, it may be right to state, what I am not extolling in myself, but describing myself correctly, that it may not be supposed that party feeling leads to any one thing I am to say on the present occasion, but that it is in the performance of my duty only. But while I say that I feel that independently of the denial of any such political principles, I have a high principle to advance as a man and an advocate; and if there are one of two, which is the most I can suppose, who interest themselves for this unhappy man, I trust it will appear to them that no prejudice against his measures will relax my efforts, or cause me to neglect my duty in the smallest degree: he shall have a fair and legal defence—that it will be defective in ability, is his misfortune in the present case, mine permanently, and through my life.

The line of defence which I shall have to pursue on behalf of this unhappy man, is one more difficult than ever I knew to fall to the lot of an advocate; and I think I should be trifling with your good sense, and be deficient in the respect you must have obtained from every one in court, for the last two days for your attention, if I could suppose that it is in the power of man to make it appear that the prisoner at the bar is guiltless of all manner of crime. To have meditated assassination, under any circumstances,—to have caused, or been privy to causing, the death of an individual, coming to execute his duty,—these are crimes which admit of no palliation; they are crimes from which the blood recoils and the judgment revolts; they are crimes that would make it absurd to say, the individual tainted with them can be held up to you as innocent: But feeling a horror and detestation of such crimes, I deprecate the application of those feelings to the criminal, until he is justly tainted with the crimes which excite them. Our horror of crime must never extend to the party accused; every man must be reputed innocent till he is found guilty. I am only anxious, and am desirous you will take it with you, that you will not come to this conclusion, "because I believe a man in heart an assassin, and in act a murderer, I will pronounce him a traitor who meditated the dethroning of the king, the subversion of his government, and the levying war against him;" these are the charges against the prisoner, and unless they are proved by evi-

dence, which weighs beyond a doubt in your minds, if they are not so proved that you can be as much satisfied as upon any point which is the subject of charge and of proof, then I say upon this indictment the prisoner is entitled to an acquittal, and in acquitting him you do honour to yourselves, and render an essential service to all posterity. Do not believe I want improperly to influence your minds, for I say without hesitation, let it operate against my client as it may, that if, in your opinion, the evidence be the contrary way, you would disgrace yourselves and injure the cause of posterity, if you refused to act upon it; but I must beg you will not suffer any thing but evidence to influence your minds in any degree; but attend to that and that alone, and give the prisoner all the benefit of an accurate sifting of it.

I had thought to make some observations on the law, but I think with the Attorney-general, that the law is so clear, that it wants little elucidation, and perhaps none but what will be safely trusted with, and will clearly and with the best authority come from the Court; but the indictment has been read to you, and as well as its length would permit, you have attended to it, and gone through the different charges. It is necessary that I should state to you, that there are four of what are called overt acts.

Mr. Attorney General.—Four substantive charges.

Mr. Adolphus.—I meant so. There are four counts: there are to each of the first three counts ten or eleven overt acts, all of which must be viewed by you as having relation to and tending to prove the original conception alleged to exist in the prisoner's mind. For example, it is said in the first count, that he conspired with others to depose the king from the style, honour, and kingly name of the imperial crown of this realm. Now, in support of that there are eleven overt acts stated: for example: that he did conspire with others to compose and prepare, and cause to be composed and prepared, with intent to publish the same, divers proclamations; and that he did various other acts in furtherance of this original intention of his: but you must be persuaded of one of the four original intentions, for without that, if all the overt acts could be proved over and over again, you cannot infer that such an intention must have existed, you must be satisfied that the intention previously existed, and that the acts were done in furtherance of that. If you should be convinced that the prisoner at the bar did intend with a certain force to go to the house of the earl of Harrowby, to murder the earl of Harrowby and all the other ministers assembled at dinner with him, that does not amount by itself to high treason, nor are you unless satisfied of it by the evidence, to infer that the former treasonable intent must have existed. It is not what you will suppose he meant to do, it is

necessary that you should be convinced that the treasonable intent had been predetermined, and was existing in the mind, or else the overt acts prove nothing in an indictment for high treason, because they are separated and isolated facts, capable of punishment in another way. To kill a privy counsellor is not in itself high treason; it is mere felony by the statute of Henry 7th; and under other circumstances to assault them with intent to kill them is made felony by the statute of Anne; but to kill them is no where declared high treason, unless coupled with other intentions, and as an overt act tending to demonstrate such an intention existing in the mind.

I think it extremely necessary to put that point to you, because nothing is more difficult where men are unpractised in the separation of the different parts of law pleadings, than to bring their minds to the main subject, and to discern what are the circumstances which alone are to guide them in the consideration of the case: and, gentlemen, when I say this, I say it with the utmost confidence, that you have all the knowledge and understanding that are to be expected in your situation, and that could be found in a jury of the country: but the law is a science having its own technicalities, which, God knows, those who have been many years devoted to it do not always understand, but which those who have not been so devoted must have explained to them, before they can exercise their talents on the consideration of the case. With that caution, I leave the law upon this subject, premising that you must be satisfied of one of four things, either that the prisoner at the bar with others "did intend to deprive and depose the king of and from the style, honour, and kingly name of the imperial crown of this realm," or that he did intend to "excite insurrection, rebellion, and war against the king," or, as it is stated in the third count, that he did "compass, imagine, invent, devise, and intend to levy war against the king," or as it is stated in the fourth count, "that he did levy war against the king." Now, I do contend that there never was evidence tendered to make out so great a charge which had less application to that charge than the evidence submitted to you; and it will be my duty to go through some parts of the evidence, to examine it by degrees and with care, and I shall endeavour to impress on your minds the difficulties in bringing the evidence to bear on the particular subjects, how weak and defective it is, how incredible, let it be related by whom it may, unless well supported, and how particularly incredible coming out of the mouths that it does, mouths from which the life of man ought not to receive danger, and to which sufficient credit ought not to be given to put the meanest subject and in other respects the most guilty, into one moment's jeopardy of his life or liberty.

In proposing to call to you an accomplice as a witness, the learned Attorney-general made some observations upon the credit to

be given to an accomplice, and upon the manner in which that accomplice must be supported in his testimony. This I think will be quite clear to you, that the whole case of the Crown as it is to taint or affect the prisoner with high treason, rests entirely upon an accomplice; for if you can dismiss from your minds the evidence of Adams, there is not a shadow of proof of high treason; there is not that which could convict him of any such crime, loosely and indefinitely as the other evidence has been pointed in support of the facts, or the presumed facts, deposed to by the first witness. I am quite sure that, in the time you have spent upon this long trial, you have sifted Adams's evidence in your minds, and that the result to your understandings must be, that if Adams is not believed, there is no case against the prisoner, and I think it cannot have escaped the observation of some of you, that if Adams is believed, there is hardly a man who can present himself in a court of justice who has not a right to command belief. If a man under such circumstances, telling an incredible story, can be believed, without support from other witnesses to set him up, then no witness can be rejected because his testimony is incredible.

It has been said on this trial, and said so too by the Attorney-general (take it with as much qualification as is necessary on such a subject) that an accomplice is not to be supported in every point; for if he were, there would be no necessity for his testimony, the other witnesses could prove the case without him, and the accomplice would be useless. I give the sense of the observation in an inferior mode of expression. That is true, as far as the necessity and nature of the case supposes it to be true. It is true that on some occasions such confirmation as will support the credibility of a witness as to loose collateral circumstances may be taken: but, if it may be taken, it must be taken I should say when all the support possible is given him—when no one is kept back that could support him—when nothing is omitted that might be done—and when care is taken to give him all possible credit, by shewing that they who produce him are not afraid of confronting him with others, for fear discord among them should produce disbelief. I say more, that those who expect to avail themselves of the evidence of an accomplice, are bound to give him all possible support, and subject him to all contradiction: he is a self-accusing guilty man; he is not entitled to confidence: and he puts himself on his trial by pointing out those who can support him. Those others are a sacred gage and pledge to his truth; or, they are like a subscribing witness to an instrument in writing, given for the benefit of all parties interested.

This point has been anxiously considered before, and I am going to read an observation of an eminent lawyer* on the subject. I do

not name him for reasons which will occur to some who are present; but he expresses this matter so much better than I can, that I will put it to you as to the confirmation of accomplices—as a matter beyond all doubt for its clearness, ability, and justness. It was said on the occasion of a trial of a man for high treason at no very distant period, and I subscribe to it entirely: observations more philosophical and just could not be made as applicable to the human mind. Said that learned gentleman, “But it is said that he” (the witness) “is confirmed; and because he is confirmed in some facts, you are therefore to believe him in the rest.—This is a position which lawyers are in the habit of stating in a very unqualified manner; but, it is not a position which can be maintained to this extent, according to any principle of common sense. There is no man who tells a long and complicated story who may and must not of necessity be confirmed in many parts of it. The witness was a long time in giving his evidence, and of course stated many facts which no man denies, which have been in all the newspapers for weeks and for months past; and, because he is confirmed in certain particulars, you are therefore required to believe the whole of his story to be true. Is this a proposition to be insisted upon? Can it for a moment be maintained to this extent, and in this broad and unqualified way? But, gentlemen, every profession and science has its phrases; the necessary qualifications are by degrees lost sight of, and the worst errors are thus introduced. Let us then look at the mischief of this doctrine, and see the evils and injustice that have arisen out of it.—The notorious Titus Oates, the witness for the Crown in the trials founded upon the popish plot in the reign of Charles 2nd;—that most infamous and perjured wretch, who was afterwards convicted of perjury for his evidence upon those trials, and suffered the punishment of the law for his crime, was confirmed in his testimony in many most important particulars. Unfortunately, the juries, misled in those times of heat and party animosity, were prevailed upon to believe him, and many unhappy persons suffered in consequence the extreme punishment of the law; and murders were committed under the forms of justice, in consequence of the reliance placed upon the frail and fallacious testimony of a man of that description. You perceive, then, the danger of this doctrine; and that it is not because a man is confirmed in certain circumstances that you can safely believe him as to other facts where that confirmation is wanting. What is the character of falsehood? Who has lived in the world, and has at all examined the operations of the human heart and mind, who does not know that this is the usual and proper character of falsehood—that it does not wholly invent. Falsehood engrafts itself upon truth, and by that artifice misleads and deceives; truth is exaggerated; things that exist are discoloured or distorted:—these are the usual operations of falsehood—this is a part of

* Mr. Sergeant Copley, at the time of this trial Solicitor-general.

its nature, its address, and dexterity. It arises, therefore, out of the very nature of perjury, that it must be confirmed to a certain extent." * On the present trial, I say, that if I had desired the best of my friends to assist my feeble powers, and enlarge my humble understanding by infusing into them just principles applicable to the consideration of this case, no friend that I have or ever had could have given me sentences so apposite—sentences that can be relied on for their accuracy of expression and justice of conception, so much as these. If you can retain them in your minds from the imperfect manner in which I have read them to you, for God's sake do, and let them be a shield for this man, against the attack made on him by a witness to whose testimony I say (not merely because it is my duty, but because it is my conviction) not one moment's credit ought to be given, nor one tittle of faith added, except in those particulars where he is explicitly confirmed. He may receive confirmation in many particulars, whereby, the common voice of common fame, every thing has been communicated to the public, and has given him the means of being assured of some confirmation so as to leave him free from hesitation in advancing those things, and to enable him to add whatever else he pleased, according to his original intention when he formed acquaintance with the unhappy man at the bar, or according to those suggestions, inspired in him by others under whom he acted.

Before I enter into a closer examination of the evidence, it is necessary to give an outline of the defence of the prisoner, to which I mean to apply my observations. I may not meet all the expectations of the prisoner, in the concessions I am going to make; but standing here to perform a duty, I can only perform it as my own heart and judgment dictate; I shall state correctly the view in which the defence strikes me, and you will see whether it supports a more rational story, or whether the incredible evidence you have heard forces you to believe the story told in spite of all the contradictions and absurdities which it contains, and to which it has been exposed. I say, I have no doubt, that the prisoner at the bar, and the party who were to move with him on the night of the 23rd of February, intended to murder all his majesty's ministers, at the house of lord Harrowby, in Grosvenor-square: to entertain a doubt of that, would be, as if, at this moment, looking on the smiling face of heaven, I were to endeavour to convince you that there is no such scene, and that there are no such things as the sun, light, or heat. I mean not to deny, that that party being interrupted in the progress of that crime, a man, of the name of Smithers, from some hand or other, met his death and was murdered—when I use the mitigated expression first, I mean it as not being satisfactorily proved, at least it will be for you

or another jury, to consider hereafter, or whether it is proved that the prisoner committed it, or whether, under all the circumstances, it was murder; but taking it on the narrative, as it stands now communicated here by two police officers, I would say, Smithers met his death there and was murdered. Making, however, these concessions, and admitting the facts are as bad as an advocate can concede, I do contend, that this case does not amount to high treason: and that the charge of that crime stands untouched, and incapable of receiving light in the investigation, from the evidence offered by the Crown. I admit the prisoner had a view to the extent I have described in the first part of my address, namely, that from personal motives he was disposed to kill some of his majesty's ministers, and had no objection to consent to kill all the rest; so far I admit; but this will be evident to you, in the whole course of this transaction, that during the whole meditation of this crime, he was beset by a spy, and accompanied by an informer; and it is upon their evidence or their disclosure, that you are asked to convict him of high treason, that is, that the machinations of the spy, inciting him to crimes he was disposed to commit, is this day to be exhibited to you in a blended form by the informer; and the facts which prove that he concurred in one mode of crime, are to be used to convince you that he meditated another which never entered his heart, and of which there is not any evidence upon which a jury can rely, to pronounce a verdict of guilty. And, again and again (I am afraid of being tedious, but I cannot repeat it too often), I say, the concessions I have made ought not to affect the prisoner, on the present trial, let him receive judgment upon them in other cases when they come before a jury, but at present the charge of high treason is unsupported by the fact of murder intended or committed, it must be an intention to do one of the four things charged in this indictment, or it amounts to nothing.

I have already stated that if the evidence of Adams does not convict the prisoner, there is nothing to convict him: I say, if his evidence does not, because if his evidence were put out of the question, and the other witnesses stated that which they have stated, it would amount to little or nothing; Adams's evidence is received, and they are taken to support his evidence, and set it up as a whole, that the case may, in some sort, be taken to be proved against the prisoner; but if the evidence given by Adams is utterly unworthy of belief, then the separated parts proved by other witnesses will not, in themselves, jointly or severally amount to a charge of high treason against the prisoner, or make out that charge, so that a verdict of guilty ought to pass upon him; and with this it will be necessary to direct your attention to three particular points.

It is conceded by the Attorney-general, that an accomplice ought to be confirmed; I have taken the liberty to state my opinion, and that

* 1 How. Mod. St. Tr. 513.

of one other person, to what extent that ought to go; and I shall beg you to examine in the first place, how far is Adams confirmed in the particular propositions relating to high treason, which he has advanced. In the next place, it will be your duty (you know your duty, but I merely suggest it as a thing that must be considered by yourselves to be your duty), to observe how much he is contradicted, and whether he is in any way contradicted by his own evidence, or the evidence of those who are called to support him; and lastly, it will be of importance to you to consider how he might have been confirmed, if there had not been some strong reason to withhold that confirmation. This is a most particular and important feature in the case, and to which I shall, in its turn, most seriously crave and direct your attention.

Robert Adams is introduced to you as the first witness in this cause. He states to you that he is a shoe-maker, and that (which he ought not to have stated without more feeling than he seemed to have), he once had the honour of serving his majesty, as a soldier, in the regiment of blues—that such a man should be found in the situation he describes, and that he should have gone to the extent he has without finding it necessary to repent, or to feel any compunctious visitings till the plot had failed for four days, is a circumstance creditable neither to his feelings as a subject, nor to his courage as a soldier; but, however, these are the circumstances in which he presents himself; he states to you that Brunt, one of the parties indicted here, had been an acquaintance of his of three years standing; that he made that acquaintance at Cambray, when he was working for the British army, in his trade of a shoe-maker; and when Brunt was there, merely as a follower of the army, then their acquaintance began, and was continued without any circumstances of particularity till they came together again, in the month, I think, of January last—and then the witness was introduced by Brunt, to the prisoner Thistlewood, and, perhaps, the most extraordinary thing took place that ever was heard of out of this cause; but it seems to have been the fashion in this cause, that the conspirator, at the head of the conspiracy, begins without reserve, and tells every one on the first meeting, what the nature and scope of his conspiracy is, that is, I am a man so determined on evil, and so careless of life and liberty, that I put myself into your hands; and if you have one grain of honesty you will report, and loyally inform against me. I condemn myself by my own words, and cannot blame you. That is stated of a man of Thistlewood's age, who has had experience in matters of this kind. Adams says Brunt and Thistlewood went plump into the matter; and let us see what they say, and what they put to this man; there is a complaint of the times, and we are to infer from the whole of the conversation, not from separated expressions here and there, what may have

been the views of those who meditated to murder ministers. Suppose they thought they would arm themselves to make a good scene of plunder; that enhances their guilt, but it does not make them guilty of high treason. Brunt introduced him, by saying "this is the man I was speaking to you about;" then there was some talk about the witness being in the life-guards, and a good swordsman; Thistlewood said, "there was no person who was worth ten pound, who was worth any thing for the good of his country;" the simple possession of ten pounds was wealth enough to corrupt them. "The shopkeepers of London were a set of aristocrats altogether, and all working under one system of government," and then follows the first declaration of his wish—a declaration towards them, if any part of this man's evidence is to be believed, he should glory to see the day when all the shops should be shut up, and well plundered. This is as unlike deposing the king as any thing can be, but it does, if the evidence is to be believed, consort with the rest of the evidence, and with another part of it, that of providing the miserable resource of arms; they had a resource very useful for the plunder of shops, but absurd for the purpose of overturning a state, or of ruling a country; sufficient for the purpose pointed at, but quite insufficient for any other purpose. If there were ever in the prisoner's mind, an intention to plunder the shops, I lament that such a man could be found; but I am not here to pass sentence upon his morals, nor are you, but to examine whether he is guilty of the charge of intending to overturn the government; and unless you can be led to infer that murdering men we hate, and plundering shops, is levying war against the king, and intending to overturn the government, there is nothing in this charge, whatever there may be in any other, which it may be thought fit to bring.

But let us see if the witness is to be believed in any part; is there any thing that encourages the supposition that this was not all, but that there really was something ulterior? Why, you cannot have forgotten that at one meeting it was said, they declared they were so poor they could not wait any longer than next Wednesday. If poverty was the cause of their moving in one way or another, poverty had no allurements to excite them to action on that more than on any other day, because the day most convenient to overturn a government is the day when it must be overturned, but the day to plunder shops is when they who undertake it cannot find a day's meal, but by robbery, and when they must do it or starve; that therefore gives countenance to the probability, that some of the party had that design; whether they had or not I do not know, but there is some evidence pointing to it, and if that was the whole design, then there is an end of the charge of high treason.

The conversation afterwards became a little sportive; two public men were characterised

in a particular way ; with that however I have nothing to do, because we are not here to assign character to any body but the prisoner, and the witnesses examined against him. This conversation, if I remember rightly, took place on the 19th of January, that is to say, one month and ten days before that was done which occasions your being assembled here to day. After that time, was the situation of the witness such as to make you believe, that he, a poor man, was applied to, not to overturn the state, but to take some measures to put a few pounds in his pocket?—He says three days after that, he was arrested for some small debt, and taken to the prison in White-cross-street, where he remained for seven days, until the 30th of January, and never came out. Is this a man who is to overturn the state, who cannot answer for his liberty a moment, or is he a person who would relieve himself from present want by embarking in some dangerous scheme to get a meal's victuals?

But, on the 3rd of February they met again, and Edwards* was of the party, and I beg you to observe, that Edwards, who does not appear to have been an accomplice, who is not in prison or in custody, is stated to have been of every party—he is in the list of witnesses for the Crown, but he has never been in the witness box before you ; however, upon this occasion the 3rd of February, nothing very material seems to have passed ; but they began then to to have a room in the same house where Brunt lived, taken for the apparent residence of Ings, but in which they had frequent meetings ; the witness says, that these meetings were held twice or thrice a day, he is present at those meetings, and we shall presently see what account he gives of his own presence ; but he having been a soldier of the king, and if a good soldier now enjoying a pension from the king, or some allowance, never thinks it his duty to disclose any one of all these councils to any person in existence. Why not gentlemen ? if it had been treason, if a man with the understanding of a soldier, had heard the absurd plot which I shall have to state to you hereafter, he would have recoiled from it with fear and abhorrence, and have given information to the constituted authorities ; he must have known no part of the plot could be accomplished, but that those who engaged in it would expose themselves to certain destruction ; but he knew as a thief that it was plausible, or that if he should afterwards fail of the desired plunder, he might come forward as king's evidence, and secure at least his own personal safety. I say it is impossible for this man to have believed the story he has invented and put before you ; but in another way it is possible he should have concurred in such a plot as I describe, and most probably he would do so as a medium between him and desperation, as a resource against starving.

Between the 3rd and the 19th, according to the witness (and it must have been near the 16th for this reason, that the funeral of the late king took place on that day) they had another conversation, and between the 3rd and the 19th this plot assumes a shape, in this witness's miserable representation, which is to bring it here as a case of treason. What passes then?—"I went up to the room" says this respectable witness, "the prisoner and Harrison were there in deep discourse, they told me the subject. Harrison said all the life-guards, and foot-guards, and "(let it not be forgotten all the Police too)" all the Police would be at the king's funeral, and this would be a favourable opportunity" to do what? to overturn the State? no, it is not in the first proposition at all "it would be a favourable opportunity to *kick up a row*, and see what would be done." Kick up a row! the very phrase explains the whole design! that all the troops should be at the funeral was impossible, but all the police officers would ; a few troops or police officers would put down their attempt, but, as the troops would not probably act without the presence of the police, if they kicked up a row, they could see what was to be done, that is, to what extent they could commit depredation. Thus far the evidence has been consistent, for there has not been a word about overturning the State, and it was only in this conversation on the 16th of February, that this matter began to be talked of, and this is the way in which it is first mentioned. "Thistlewood (says the witness) approved of the plan," and without any introduction of the matter, by any thing said in the course of the conference, bolts upon this subject, "if they could take the two pieces of cannon in Gray's-inn-lane, and the six in the Artillery-ground, they would have possession of London." The possession of London! I should have thought that any man with a military education—I should have thought that any man who had seen the march of a single regiment, would have said at once, there is nothing less probable, than that you would have taken possession of any one parish in London—of any one populous street in London—all that which is here proposed, and all that which is afterwards proposed, would not give secure possession of Oxford-street. Of Oxford-street! it would not give the possession of a street of half its importance, because there are avenues that would require the guard of four or five hundred men, and much more artillery than these conspirators proposed to have, but "if they could get the two pieces of cannon in Gray's-inn-lane, and the six in the Artillery-ground, they would have possession of London before the morning, and if once it was begun, and the fact was communicated to the army"—what would happen do you think?—poor men "they would be at his majesty's funeral, and they would be too much fatigued to do any thing," so that twenty-five men were to hold London with eight

* Concerning this person, See the Debates in the House of Commons, 1 Hans. Parl. Deb. N. S.; pp. 54, 242.

pieces of cannon, because the soldiers would be tired with sitting up a single night, and could not come to rescue the metropolis and the kingdom from a handful of desperate ruffians.

Is it to be endured, that a man shall come with these crude and rash inventions to swear away the lives of eleven men, upon testimony which would, in another place, weigh nothing in proving a milk-score or a washerwoman's bill? Can such idle dreams and dotages be received in a court of criminal judicature, or should they not rather be dismissed with the scorn and contempt so eminently their due? But when I make this exclamation, I am only at the beginning of the subject; he adds, "by persevering after they had got the cannon, they might prevent any communication from London to Windsor"—they were to possess all London, and all the road to Windsor, and all the avenues by these notable twenty-five men, and eight pieces of cannon—this is Thistlewood's plan, and against it the soldier did not say a word in the way of remonstrance; but it seems that remonstrance came from a man who was not a soldier; he used a little common sense, and stated obvious difficulties, although Harrison and Adams, with all their military experience, said nothing against the plan.

The conspirators who could devise such a plot, might well be considered as mad; but at least they had method in their madness—they were to do a great deal, they were to secure London against the troops, command the road between London and Windsor, and to cause a diversion and take possession of the telegraph at Woolwich, for fear some information should be conveyed to the ports. Thus were roads to be commanded in this direction; important diversions operated in that; telegraphs secured over the water; a metropolis like London secured, and an army paralyzed, by a band of five-and-twenty paupers, who, in addition to their other wonder-working faculties, must have possessed the gift of ubiquity. Must we not wonder how such things could enter into any human mind? Is it possible to suppose that a man, unless he were too insane to come before a jury for trial, could have been the father of these plans? That a wicked man may have invented them, I can well understand; but that any seven or eight men, two of them soldiers, should have met to act on so ridiculous a proposal, exceeds all human credulity. If this can be credited, there is nothing in oriental fiction—nothing in ancient or modern poetry—nothing in the legends of the fathers, or the lives of the saints, but may be received as history and credited as truth.

But Thistlewood has not yet done: inspired with the presumed success of his first operations, he observes, that "that will be the time to form a provisional government." You see their military exploits are nothing in comparison with their profound political schemes:

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When they should have gained possession of London, these obscure beggars, these wretched paupers, who had not a man of any consideration, fortune, or figure, to support them, are to form a provisional government. That phrase is essentially necessary; that constitutes the chief point of their guilt. If you disbelieve that, gentlemen, whatever you may think of them in other respects, the present case vanishes, like the fabric of a fairy vision, into thin air. The forming a provisional government—that pretty phrase which has been transposed into a hand bill—is to make out the guilt of these men. A little before the late king is buried a thought comes up, that this would be the time to form a provisional government—to form it, and out of what materials? It is not pretended by any body at present—it may be hereafter, if you believe the witness—that any man of rank, wealth, or consequence, had anything to do with this. Believe him to-day and you will not want that afterwards: but these illiterate beggarly wretches, who could not agree with each other about three or four lines to be written on a piece of cartridge paper, one began it, then another, and at last disagreed about it, were to form a provisional government. "The provisional government" then, says Thistlewood, "is to be formed when we have got possession of these cannon, and when we have commanded the road to Windsor, and impaired or possessed the telegraph at Woolwich; and there is every chance of not being interrupted by the soldiers, because they will be too tired." Mr. Adams and Mr. Harrison in their military education never heard of a bivouac or a night march; they believed the soldiers could not have made a forced march of twenty miles; that no means could have been invented to bring them by water or in carriages to quell a revolution, undertaken by twenty-five bold men, who had possession of eight cannon, without a horse to assist them.

What was next to be done? business multiplies upon us fast; we have done a pretty good stroke of work already; but another thing must be effected, we must get possession of several out-ports, Dover, Brighton, Ramsgate, and Margate, and prevent any persons from leaving England without a licence. Very fine indeed! I wonder they omitted Harwich, and others, which might have been of use; but, however, Dover, Brighton, Ramsgate, and Margate, are the ports which are to be secured; and all this was to be accomplished on the night of the king's funeral. I do not know how many men were to be detached on this exploit; it was, however, to be done, and Brighton in particular must be taken possession of, because it brings the mind of the witness happily, and forms his tongue most naturally, to some intention about the present possessor of the crown. Long may he continue to wear it. Brighton was to be taken possession of, why?—not because the king was there; you know

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the king was labouring under as severe an indisposition as nature can endure, and bulletins of his state were issued every day; and therefore he was not likely to be at Brighton for some time: that every newspaper would shew. His majesty is now happily recovered from that indisposition, and, in common with every good subject, I pray to God that it may be long, very long, before he experiences the recurrence of that, or feels any other calamity. I pray too that the sceptre of these realms may ever continue in his illustrious house. But these sapient politicians and bold conspirators, it seems, have decreed otherwise. The king was not likely to be at Brighton, nor at the funeral; but now comes the real aim: all before has been shot in the air—"He could not be allowed to wear the crown." These twenty-five men, with the eight pieces of cannon, could not allow him to wear the crown, "the present family had inherited it long enough. There has been no change in the succession for the last hundred years, and we think they have inherited it long enough, and there cannot be any use in his wearing the crown:" and these sage politicians, as it is represented to you, decree the deposition of the present king, and fulfil the first count of the indictment. There, gentlemen, is the secret unravelled; these are the words of the wise; these the edicts of the powerful. Here is a kingdom to be overturned in an instant; the soldiers are to be absent; and these men are to meet with others, and agree to move eight pieces of artillery, without a horse that would grace a hackney coach, to subdue the greatest metropolis in the European world; without any more force than that already described, they are to possess the greatest public road in the kingdom; they are to incapacitate a large body of troops from marching twenty miles, secure the telegraphs and sea-ports, without any other means than their own will. Such is the plot as it has been represented to you by this shameless fabricator of incredible falsehoods, and by him alone is the first count of the indictment supported. There is not a soldier who could have lent himself to it for a moment, and I should have thought, if I had not seen the witness in the box, that it exceeded any confidence a man could possess to have dared to state it.

But it was also stated (because now the other parts of the plot begin to emerge) that two or three had drawn out a plan to assassinate the cabinet ministers at their first dinner. Now that is a curious phrase; it goes through the whole of this narrative, and it was known the cabinet dinners had been suspended during the period which followed the death of his late majesty, and during the illness of his present majesty; and now, mark how this tale of this wretched witness breaks itself to pieces directly it comes to be touched. The ministers were to be assassinated at a cabinet dinner, and that was to be before the 16th of February: there was no talk of a cabinet dinner before that,

and yet the explosion was to take place on the 16th, and the government destroyed, although there was to be neither meeting of ministers nor cabinet dinner at the time they were plotting it: these falsehoods astonish one by their absurdity, they are gross, open, and palpable; too flagrant for detection, too gross for exaggeration.

It seems at this time there were other meetings at Fox-court, and particularly on Saturday the 19th, and on Sunday the 20th; and at the meeting on the 19th, nothing occurred but this remarkable observation, that "they must do something on the following Wednesday." His late majesty had been buried, the troops had not been absent or so conducted themselves that the conspirators could surprise and overturn the government, that plot had gone to nothing, and now their attention was to be called to something else; but now they are scattered in their views, and fall back on their original scheme of plunder; the announcement of the cabinet dinner in the *New Times* had not come to their knowledge, but something must be done on Wednesday next (and Edwards was there), because they were all so poor they could wait no longer. If there is any truth in this, it still resolves itself into my original proposition, that poverty was their goad, and plunder their aim, but nothing which could be called a political motive, or be put in question as endangering the government at all. Then it is said, "if nothing takes place between this and Wednesday, we will go to work; we are all so poor that we can wait no longer," and then a committee was proposed, and we shall see the next day the sittings of this committee, and the propositions made at it.—"On Sunday morning, about eleven o'clock," Adams says, "I entered the room. Owing to the thickness of the snow I could hardly see. I afterwards saw Thistlewood, Brunt, Ings, Harrison, Hall, Davidson, Harris, Cook, Tidd, Bradburn, Edwards, and Wilson. I found the business had not been entered into, Thistlewood proposed that a committee should be formed, and Tidd should take the chair." Tidd, therefore, I suppose, as a rehearsal of some intended scene in the provisional government, is duly installed with a pike in his hand; and now let us hear what he proceeds to do. Thistlewood was on his left, Brunt was on his right. Thistlewood said to the committee, "I presume"—for certainly they had had no time to talk of it before all this had been done, without the least knowledge or suggestion on any one's part: you have heard the plot detailed by this witness, but Thistlewood says this according to his fiction,—"I presume you know what we meet here for." Upon my word, it was no small presumption, for no man could possibly know, "he turned to the door, and said, I mean the west-end job." Now this is the first time the west-end job comes under our notice. Brunt never speaks without an oath, therefore, to make him natural, it comes out thus.—Brunt

said, "Damn my eyes, mention it out; and Brunt was called to order by the chair." There is regularity; there is decency and propriety! Thistlewood then said, "Gentlemen, as we find there is no probability of the ministers dining all together, we will come to a determination to take them separately at their own houses. We shall not have so good an opportunity as if they dined all together; so that we must take two or three at a time," that is Mr. Thistlewood's proposal, as the witness states it.—"I suppose we can have forty men for the west-end job; so I propose, that the two pieces of cannon in Gray's-inn-lane, and six cannon from the Artillery-ground shall be taken, and that Cook shall command them;" here we have the old plan brought forward again of the eight pieces of artillery.—The main body being gone to the west-end job, the artillery is to be taken by the residue, which is to be formed out of a number which never has exceeded twenty-five. The first witness swears he never saw at Fox-court more than fifteen; the doubt between him and another witness at Cato-street is, whether there were twenty or twenty-five, but these were to be manufactured into forty men for the west-end job, and the others were to take the cannon and to seize the Mansion-house.—The Mansion-house!—twenty-five men would have been completely lost in the passages: they might as well have gone to take the Tower of Babel. But the Mansion-house is not all; they are to proceed to the Bank, and make an attempt upon that; and Palin by himself, uninterrupted, and carrying his satchel of combustibles at his back, is to set fire to buildings in different parts of the town; the provisional government is to be installed at the Mansion-house—nobody to instal it—the Bank is to be attacked, and Palin, in the mean time, is to be wandering about, setting fire to houses for his amusement, and for the perfection of the plan. This is proposed: what becomes of it in debate? Thistlewood said "there would be time between that and Wednesday to improve the plan," and he dropped the subject for the present, as Brunt had a proposition to make about assassinating the ministers. Thistlewood afterwards says "he will not drop his plan," and after some little obstruction and difficulty, he has it put to the question, and it is carried without opposition. A glorious beginning at least in the provisional government—there is no opposition—it is carried *nem. con.* "Brunt then proposed, that they should divide themselves into separate lots, and go forward to assassinate the ministers separately, unless they had a cabinet dinner."—This is Sunday.—"Out of each party one should be chosen by lot to assassinate the person designated, and whoever the lot fell upon was to do it, or be murdered himself." Now how was that to be done, or who was to be the spare assassin, who was to kill his accomplice?—I cannot tell, but this is one of the many fictions you have to swallow, if you can give credit to this man's

testimony. But on that, the witness began to fight the old soldier; he saw difficulty in it, and, speaking for the first time, he said, "may not a man fail, and is he to be run through if he fails from unavoidable circumstances?" "No," said Thistlewood, "not unless it is through cowardice." To what court-martial the failing assassin was to be subjected does not appear, but the whole comes over you like the dream of delirium, or the illusions of frenzy; and you are to believe it, however repugnant to credibility, because this witness states it on his oath. Then Brunt's motion was put and carried. In a few minutes in came Palin, Potter, and Strange; Thistlewood communicated to them the plans, and they agreed to them; but Palin seems to have been a politician of a higher class than the rest, for he, in a very parliamentary form, "rose to say a few words," and he said, "agreeing as I do in the plans proposed, there is one thing I want to know, there are so many things you have proposed to do at one time, that it would be of the greatest benefit to us if it could be done; you talk of taking forty or fifty men to this west-end job, you doubtless know better than I do what force you are able to bring, but before I go round to the friends I can bring, I wish to know, am I at liberty to tell them what has been resolved on in the whole, or in part, or am I not?" Then Thistlewood gives this answer, an answer which is usually given somewhere else, importing confidence in ministers; Thistlewood said, "Mr. Palin undoubtedly knows what men he has to depend upon, and he will know how far he ought to trust them." An answer prodigiously wise and sententious, for it tells him nothing one way or the other.

Now you will see the importance of what Palin has said; it is demonstration of the weakness of their resources, and the impossibility of their having entertained the design charged. He expressed himself doubtfully of the plan, on the ground of their weakness and inability to execute it; he doubted the existence of resources; yet no satisfaction was given to him; there was no pretence of an ulterior force; he obtained only a general answer. "Mr. Palin, undoubtedly, knows what men he has to depend upon; and he will know how far he ought to trust them." On their separation on the Sunday, what was to be done? Palin the engineer, was to go and see what could be effected; he was to view a building in the neighbourhood, which appears to be Furnival's-inn, and it was said, "if that building could be set on fire it would be a good job." Palin, afterwards said, "it could be easily done:" if the test of fiction is to be in this case what it is in every other, some remote pointing to possibility, but a total want of rational application to probability, this would be sufficient to stamp this as a gross and flagrant falsehood. Of all the buildings in that neighbourhood, Furnival's-inn is the one that presents the least facilities for being fired; it is a new building with party walls, accord-

ing to the Building Act no doubt, and built so as to prevent the communication of fire, and to make it far from easy to set the whole pile in flames; if they had pointed to other places where some of us live, the buildings are older and the communications more free; but Furnival's-inn is the least probable of all the inns of court I know. If they had gone a door or two on either side nearest to Leather-lane, they would have found buildings of wood, which if they had applied a match to, would have raised an inextinguishable conflagration. Perhaps old Furnival's-inn was in his mind, and this favoured his fiction: but if any man were to say the new building is easy to fire, he must be such an idiot and driveller as hardly exists on the face of the earth. A man in prison inventing something he is to tell the Privy council and a Court, may strike on such a subject as this; he states it in examination before the Privy council, and he must be taken as he is found; for those employed by the Crown would not suggest what would make his story probable, they bring him before the jury, with all the credit they can give him, but with no assistance beyond that—for they would disgrace themselves if they did give it; and from the Attorney-general to the clerk of the Solicitor to the Treasury, there is not one I am sure but would disdain putting his hand to such a thing. Therefore, having once said that that new building is to be the object of attack, and that Palin and another man approved of the plan, he comes to tell you so to day, that is, to swear to a fiction he has fabricated, in hopes that you will believe from him that which is impossible. Any man opening his eyes, and seeing the inn guarded by a gate, protected by a porter, and difficult of access, would say, that never could be the place chosen; it being entire within itself, without communication with any thing else, and leading to nothing which can much attract or engage the attention of the public. I apprehend that that inn being on fire from one end to the other, would create less sensation than a chandler's shop would at Charing-cross, because the streets diverge from that neighbourhood in so many directions, and the population there is so much more crowded together than in the part of the metropolis where the supposed fire was to be made. In the analysis of this man's evidence, you see the grossness of fiction, and the fondness of delusion: he hopes to gain reward or save his life; and he states what first comes forward, to prove a plot, which (if it existed) a wise government might have overlooked, a strong one might have despised.

We come now to the business of the Exchequer. It is represented by some one, that if men are to be collected to do all this hard work they should eat a little bit, upon which Brunt says, "Damn my eyes;" and I must request your attention to the expression, from what was said in evidence, and by the Attorney-general, in his opening. I beg pardon if

I shock your ears by the repetition of these execrations, promising it is not a needless repetition; but Brunt introduces his speech, as usual, by these words; and he says, "he has been out of work a great while; but he has got a one pound note, and will spend it all in treating his men"—the magnificent Mr. Brunt treating his men with a one pound note. Supposing Brunt did execute the generous intention, that would give you an insight into the secret; for if he gave them only a slice of cheese and bread, and porter, or gin, the fund would be exhausted on forty men, and there is an end of the Exchequer and the revolutionists—for the most money produced was on one occasion six shillings, on another a shilling, on another seven-pence; this was all the treasure that astonished the eyes of the gazers, and a one pound note was talked of, that they might see on some future occasion if he possessed it, or rather if this man is to be believed; for I ask again, is it credible, that twenty-five men, from the dregs of society, could be allured by sharing in one pound to overturn a state? or whether it is not probable they had some other view? or whether it was any thing more than the hope of such plunder as confusion and uncertainty might assist them in obtaining, when they had done something which would create a very considerable alarm.

I have endeavoured, in the hours I have stolen from my rest, to direct your attention to the material parts of the evidence. I do not affect to go through all parts of it; I endeavour not to omit any thing against the prisoner, and I make such observations on it, as I think it bears. The task of reciting it at large belongs to my lord; I know how it will be done, and need not dwell upon the subject. There was a meeting on the 21st. The plot is ripening, and something is to be effected. On the 21st something is said that might throw a little doubt upon the proceedings of these gentlemen; namely a communication from the landlord of the White-hart, that Bow-street and the Secretary of State's office had got notice of their plans; but it frightened them not a whit; they are as brave as ever. Whether there had been communications to Bow-street, and the Secretary of State's office, we might have had the means of knowing; but we have not; that there had been some communications, we know, from lord Harrowby, but to what extent we do not know, because one witness has not appeared. But communications had been made (as I have no doubt this witness well knew, at the time) to the Secretary of State, and to Bow-street, and therefore, something must be done to force the plan forward a little, and we shall see what it is.—Upon the next day after the papers had been examined, and no man had reason to believe there was a cabinet dinner fixed—who do you think announces that there is one? Mr. Edwards—who produces the only paper which contains it? Mr. Edwards—he points out the only paper which contains the intelligence

and the paper is bought; and as you have heard in the evidence and cannot disbelieve, that intelligence—fabricated to deceive the conductor of the paper and to become the stumbling block of these people—that falsehood is put into the *New Times*, which the Court reporter did not know of or communicate, which appeared in no other paper, but which most miraculously crept into the *New Times*, and that under circumstances to make it quite clear that the Court reporter had not given it, because he says the term *grand* could not be applied by him, that one cabinet dinner is not more grand than another, and therefore it would mean nothing. Then you see how the matter had been fabricated, and for what purpose:—then comes this glorious news; as it may be deemed, to these men, announced by Edwards, and proved by the production of the *New Times*. What is the first thing that passes upon it? and from this time I shall discharge Brunt's imputed execrations from your attention. The Attorney-general, believing his instructions, made an animated observation upon the impiety as well as the obduracy of a man, who could state his belief in God, in consequence of his prayer having been granted, in the appointment of this dinner. To be sure if the thing were true, it stamps an iniquity and infamy beyond example; but you will see it is impossible. Brunt is reported to have said "Now I will be damned if I do not believe in God;" in the mouth of this fiction-making witness, Brunt said this, "I have often prayed that there may be an opportunity when these thieves may all be got together, and now God has answered my prayer." What is this? I did not believe in God when I prayed to him, but now I do believe in him. I blaspheme his holy name, and the best of his attributes. I, Brunt, had never believed in God till this moment, but now I will begin to believe in God; but I have prayed to a God in whom I did not believe, to grant me an opportunity of murdering a certain number of his creatures, most favoured, in point of wealth, fortune, talents, and circumstances, and now that prayer is granted, I shall begin to believe—and I, who prayed when I did not believe, confirm my faith, by blasphemies and execrations. These are the fictions of a gross, rank, ignorant conspirator, who thinks that every thing he swears will be believed; but his inventions are below human ingenuity, and almost defy the grasp of human investigation; if we examine them we are almost prompted to believe them, because they are impossible; as a person once said, "I believe because it is impossible," that is, because no man would invent that which is so incredible. Now, I put it to you, that unless, upon a trial of life and death, you would adopt what was sportively said, in a philosophical argument, you cannot believe this; for if this witness is contradicted out of his own mouth, and states that which is incredible, from that moment, his evidence is tainted with

the disbelief in your mind, his credit is perforated by his own act, the tide rushes in, it sinks to the bottom, and can no longer form either a vessel or a buoy; it is gone for ever.

But I must proceed with my observations on this statement, now we have got through Mr. Brunt's exclamation on which the Attorney-general made his observations: then a committee was to sit directly, "and I" says the witness "was put into the chair; Thistlewood wanted to propose a fresh plan respecting the assassination, because now the ministers are caught in a purse-net—fourteen or sixteen of them—a good haul—and therefore, it is necessary to form a new plan, but" says the Chairman (the witness), "I interrupted Mr. Thistlewood in this, referring to what I said yesterday," that is, to what had been said about information being given at Bow-street and the Secretary of State's. Upon that there was a confusion and violence, and I beg you to carry your attention to that, because I shall have to advert to it hereafter. Harrison said, "If any man should do any thing to throw cold water on the business, he would run him through the body." What, after such threats as this, could attach this man to his associates? he had time, he had means, and yet he mentioned this to no one, and the next day he was baited like a bull or a bear, but he remains firm, he does not desert them, but however he was deposed from his kingly dignity, and Tidd was put in the chair; then Thistlewood wanted to proceed, Palin stopped him from further explanation, and they moved, that a watch should be set at lord Harrowby's house, and accordingly a watch was set. Now, this is the truth not to be doubted, and this is one of the extraneous truths proved, to which I shall direct your attention—a watch was set at lord Harrowby's house, as part of the plan which I say most undoubtedly did exist, of assassinating his majesty's ministers; whether there would be any material impediment or obstruction to that, that watch was set to ascertain, and Davidson was the man who occasionally watched; this is confirmed to an extent I cannot deny, and I shall observe upon that by and by, because it never shall be my wish to press any observations on the jury, without treating that which could be said on the other side as fairly as I can. This meeting is on the 22nd, and the watch was then proposed; it was to be set at six o'clock, and to be relieved every three hours, up to twelve; there was no great sagacity in the measure, but such as it was it was pursued.

Then they go on to the proposal of the plan, by which the ministers were to be assassinated; I shall only refer to it briefly, because, though I do not wish to urge newspaper knowledge more than is necessary, still it is impossible you should not have minutely informed yourselves of the means by which it was proposed to carry the murder into execution, and the narrative of the witness in the box agrees with it, to the minutest particulars. Thistlewood.

was to knock at the door, and obtain admittance, on the pretence of having a letter—the servants were then to be secured—the conspirators were to rush up stairs, and the parties were to be murdered—these (with a little additional figuring which comes out then, or a little after, about the butcher who was to take off heads and hands, as his share of the plunder) are all the particulars of the plan, and all which he has stated without a variance from what was given in the newspapers derived from his own information and that of others.

After having murdered so many of the ministers, what are they to do next?—they fall back, so barren is their invention, upon their old plan: Gray's-inn-lane and the Artillery-ground are to occupy them all, they are to get eight cannon without horses, by merely touching them with their fingers I suppose; and again the unseen, unknown, unnamed, provisional government is to be installed at the Mansion-house; what is to be its operation no man has said, what it is to govern or whom, whether it is to depose the lord mayor, or any other king, is not disclosed; but the whole plan is a provisional government. Unless there is magic in words—unless you suppose that the pronouncing of them will “raise spirits from the vasty deep”—I am as ignorant what is meant by them as I was when the Attorney-general began. I did not know what they were aiming at; nor has any one person yet thrown the least light on the subject. These men were to be engaged in feats of arms, or scenes of plunder, and that there was any other person connected with them you have not heard as yet. Shall I say why?—if they had said so, as was done upon a former occasion, upon a trial where the name of Thistlewood was mentioned, some of these persons might come here as witnesses, and say, we never knew nor heard of, nor consented, to any such thing; nor do we believe there was a plan to make us a provisional government. And then the credit of the witness would be broken to pieces on another point, in addition to the many I have already mentioned.

But let us see, further, what these redoubtable conspirators are about, according to this man. One generally supposes that a printing-press is one of the engines without which a revolution cannot move for a moment. Have they any press?—No; not the means of printing a solitary placard; but Thistlewood is to write in such a hand as he can (and I wish you could have seen his writing) on three pieces of cartridge paper, certain magical words sure to effect a revolution in the country: “Your tyrants are destroyed—the friends of liberty are called upon to come forward—the provisional government is now sitting.” Your tyrants are destroyed? surely they do not mean that his majesty's ministers are the tyrants of the country; if they do, with all my heart they are destroyed, and there is no view to any other tyrant to be destroyed. If they say it means the ministers, there is an end of the treason; be-

cause, in point of fact, there is nothing done but to murder those worthy persons. It is a wicked murder, but not high treason. If the meaning of the words is his majesty's ministers are destroyed, there is an end of the undertaking; and it is only required that the friends of liberty should come forward, not stating what they are to do; and that a provisional government is sitting, not stating where.—The gross folly of this would exceed all human belief, if stated by the most respectable person. If a dying martyr said it with his last breath, it would stagger credulity; but how much more, when it comes from a man tainted with falsehood in every part of his evidence.

Upon the walls of the buildings in flames were these papers to be placed, to the end that the people might see them by the light. These invitations are to be put on the walls of the houses on fire, to be consumed or crushed, and this is to be the mighty engine to levy the whole mass of the friends of liberty. The conspirators having no communication with any body,—being incapable of disclosing their intentions beyond the spot where they instituted them,—the friends of liberty, whoever they may be, were, as they passed the fire, to be called on by this paper to come forward—for a provisional government (we do not know how composed) is sitting, we do not know where. Is it possible to sacrifice the life of men upon such fictions as these? Is it possible that a jury of the country can take the lives of eleven men, on the deposition of such a witness, swearing to such egregious falsehoods as no man can believe?—fictions which are incapable of being brought into contact with common sense; and which no man who can count five, can be supposed to have suggested or have countenanced? We get rid then of those three placards which are to be the means of raising the friends of liberty; and all this is to be done before there is time to go to the Mansion-house, because, if you set a house on fire in Holborn, and go to Gray's-inn-lane to fetch cannon, the placard will be gone, and there will be no finger-post to point out where the provisional government is sitting; whether in a garret in Crown-street, or at the Mansion-house, no man could see from this bill; and yet you are to believe this was a plan for overturning his majesty's government—for levying war against the king—and for deposing him from his regal Crown and dignity as the sovereign of these realms.

I am tired of repeating the incredibility of this story, and I proceed reluctantly to a further statement; I do not intend to pursue this man's evidence, in his walk from the room in Fox-court, to Cato-street; but before we go let me remark on one thing stated by Ings, the butcher. I wish some part of the exhibition, made here yesterday, were here to day. I have formed a conception,—begging, that if it is unfounded, you will dismiss it from your minds, and not let my client be prejudiced by a mistaken impression of mine,—but Ings is represented to

have equipped himself with a belt and two bags, the belt containing several pistols; he having a sword, and the two bags being also about him. And you are taught to believe by this witness, that a human head was to be put into each of them. If there is in the mind of man, any thing sufficiently atrocious, to have crowned and confirmed assassination and murder, by a display so barbarous, I lament, and am truly heart-stricken by it. When I have heard and read, as I did many years ago, of those exhibitions in France, to which the Attorney-general adverted, I was then at the age of twenty or thereabouts, and even in that gay inconsiderate period of life, every nerve in my frame thrilled, every drop of my blood ran cold with horror, when I read of human heads paraded about the streets of Paris, and of the cruel insults offered the royal family, by exposing to them, through the grates of their prison, the bleeding remains of those whom they had most loved. God knows I felt comforted by an honest assurance, that while British sentiment remained, such scenes never could take place here. No man would dare to publish himself as the perpetrator of such acts; but to day, to grace this cause, and to make additional impressions to the disadvantage of the prisoners, it is to be imputed to Ings, that he had this unnatural and incredible atrocity in his thoughts.

Now, I come to the observation I meant to make; it may be unimportant and unfounded—but if I remember rightly, the bags brought before the Court, taken from the person of Ings, were such, as no man who had exercised the trade of a butcher, could have proposed to put a human head into—they were not large enough to contain it. I am told I am mistaken; I thought it was so, and I am only convinced of the contrary, because one of my learned friends obligingly corrects me, wishing that I should not persist in an error. But be the possibility as it may, do not for God's sake let us be deceived by these ignorant fictions—fictions, abusive of the nature and quality of Englishmen—fictions, which unless we give up all sense of national character, to favour the tale of such a witness as Adams, cannot gain belief in our minds. But examine your own thoughts, gentlemen, take the declarations of all these men, from the beginning to the end of their supposed plot—their declarations of poverty—their expressions, that they were so poor, that they could not stay beyond Wednesday—that they shall not fear the traps, those are the police officers,—and then see whether it was the lord chancellor's head, or lord Harrowby's plate, that was to go into those bags,—that a needy man, in the perilous situation in which Ings was placed, should encumber himself with two unprofitable heads, is altogether incredible. The intention was, to strike the ministers from the face of the earth; but Ings would not have loaded himself with their heads, when salvers and goblets, and beakers and spoons, were within his reach, and would have enriched him:

plunder was his object; for Ings is the most clamorous about poverty; and Ings, therefore, is much more to be supposed to intend to steal the plate he should find, than to encumber himself with human heads, of no use, but to raise all mankind against him, and with a hand, the hand of lord Castlereagh, which was to be put in pickle, and shewn on some future occasion, whether for money, or as a trophy, does not appear.

I have said I will not accompany this man in his walk from Fox-court to Cato-street, the circumstances he discloses there are of little value in this cause; but when you come to Cato-street every moment assumes some importance. He goes in, and tells you that there were numerically (he does not say as he computes or believes), but numerically there were twenty people in the house besides himself, and he separates them exactly, eighteen in the room, and two below stairs. He tells you there was one candle, and one candle alone; that that candle (for he mentioned it in the singular number always) was put out on one occasion, and he cannot tell who did it. That when the Bow-street officers came up, they used these expressions, which I took down:—Two stood at the door and said, "Here's a pretty nest of you. Gentlemen, we have got a warrant to apprehend you, and we hope you will go peaceably." To these very phrases and sentences he swears most distinctly. It will be my duty hereafter, when I state where he is confirmed and where contradicted, to beg your attention to these circumstances, because they are pregnant with strong contradictions, and add to my belief that he was not present at the place: What was the whole exploit as to him?—a thrust with a sword was made, and he was very near the officer, but he escaped immediately, and walked away as unconcerned as if nothing had happened: those were his very words. If he was present then he was known to the officers who came there, and who favoured his escape. If he was not present, he is stating from public report what he has sworn to, helping it out by such additional circumstances as at his leisure he could devise.

With your experience in courts, some of you may have been astonished that my learned friend cross-examined this witness so shortly; that he did not go more into the circumstances; and that he did not endeavour to get from him contradictions upon particular points, where it might be expected he should betray himself into contradictions. Gentlemen, I had the honour to submit to you that every science has its own particular technical points, and my learned friend never shewed himself a more consummate master of his profession than in the brief examination of that man. To have examined him again and again, would only have produced the repetition of the fiction you saw so much of, under the examination of my two learned friends the Solicitor-general and Mr. Gurney. You saw how accurately he had conned his story; how ready he was to prevent

their running a-head, when they were proposing fit and regular questions according to their experience and judgment—he checked the counsel: “I am not come to that part of the story yet,” or, “I have something else to say before I come to that;” and not once but repeatedly,—conduct very natural in a man who, during the term of his imprisonment, had planned and chalked down, and devised, and designed, every thing that he could say; who could not be put out of his way as to a single word by any proposition, and who would not suffer his story to be mutilated, whatever the necessity and desire to do so might have been, and however fit it might have been to put his narrative otherwise. “No—I have not come to that part of the story yet;” and then he goes on with words and phrases preconceived for the purpose, and gives you his lesson as if he had learnt it from a book. Then, if my learned coadjutor had wasted his excellent talents in cross-examination, what would have been the result?—he would have said twice that which he had said once. Witnesses like this are not overcome by cross-examination, but by an examination of their manner in giving their evidence, by investigating the improbability of their story, and by seeing how much of it must be mere matter of invention; therefore nothing came out in cross-examination except this—and most important it is—that when pressed upon that part of the subject, and with allusion to a phrase which the Attorney-general had imported into his speech from the greatest poet in our language, whether he had any “compunctious visitings,” he swore—believe it if you can—that conscience alone!—no fear for his safety—no hope of a better state in this world, by reward or punishment—but his heart-stricken-conscience alone—induced him to be quiet from the murder of Smithers on Wednesday night, till his own being taken quite quietly on Friday; and then on Saturday he plumes his wings and goes before the privy council to disburthen his soul, and make atonement for his offence. I have been much in courts where informers have been called on to disclose what they knew of a matter; and I remember a very wise and able magistrate of Middlesex, who filled the chair of that sessions for twenty-six years, who, when an informer answered that he brought the prosecution forward for the love of public justice, always said, “Sir, the moment you say that, you become incredible; and there is no believing a word from your mouth.” Now, can you believe this man’s story? He has been attacked as by a lion and a bull dog, put out of the chair, treated with indignity. He sees a murder committed, walks away as unconcerned as if nothing had happened. His conscience strikes him, though his pride was not hurt. He rests on the stings of conscience four days, and then he unburthens himself. One would suppose that you had not hearts, that you were not conscious of your own feelings, or else a man would not have the audacity

to stand up before you, a discerning jury of the country, and state that which the children of a nursery would reject as unfit for belief.

I have now done with his examination; but, before I proceed further in this most arduous case, let me set myself right in one particular. Have any of my expressions induced you to think I have treated the case with levity?—if they have, absolve me from such an imputation. I never meant to do it. Men of right minds cannot treat lightly matters of this grave importance. I cannot hear without shuddering—I cannot believe without amazement—without indignation—without all the feelings of abhorrence that can enter the mind—that the person who has for so many years presided with unexampled industry, ability, and integrity in the highest and most important court of this country for the decision of questions of property, was in one moment to be a senseless corpse; that the victor of Waterloo, the pride and glory of the British name—he who exalted to its highest pitch the renown of our national valour, and became at the same time the avenger and liberator of Europe, was to have fallen under the hands of vulgar assassins, and to have perished in an inglorious broil.

Gentlemen, I omit to name other intended victims for other reasons. I do not brag of my private or occasional acquaintance with any body, but I may have a slight acquaintance with some of them: take your measure from these two individuals alone, and say that they are connected with all the wealth and wisdom and learning and talents which were to be present at that cabinet dinner, and I am sure that the stoutest heart must recoil with fear and melt with compassion, at the mere mention of such a horrible batchery. And if you can suppose that I have treated it in any degree with levity, it has been from the inadvertence of the tongue, and not the corruption of the heart. I never intended it; and if I have done it, I entreat you to replace me in your moderate and favourable regard, to view it with the kindness which I ought to claim as an Englishman.

I proceed to the task of examining in what degree the witness is supported; and for that purpose I beg to bring back your minds to the passage I read from the book, and beg you to see how far this witness, telling a tale stigmatized with appearances of falsehood from the beginning to the end, is supported so as to gain your unlimited credit. He is supported in propositions of very little importance in this way by Mary Rogers, mistress of the house in Fox-court—I do not go through all their names:—there was a servant from the house who proved nothing, but that she had shewn the lodgings to somebody in January; but Mrs. Rogers proved that the lodgings were taken for long—no furniture sent in, and sometimes chairs were taken from another room, and once a table: so far he is confirmed—the apprentice, Joseph Hale, confirms him to an extent nearly similar; I shall observe where they contradicted

him. Now, with respect to this there is no dispute. Joseph Hale supports him in saying, that during the latter days of the occupation of that room, before the explosion in Cato-street, numbers of persons used to resort there; that is the confirmation he has generally given with respect to that matter. Lord Harrowby and his servant confirm the intention of having this cabinet dinner on Wednesday, the 23rd of February; of that there cannot be a doubt, nor is it part of my case that that was not intended to be the day of the murder—it is unimportant as it relates to the treason; but lord Harrowby confirms another witness, Hiden, who did communicate to his lordship, in the Park, in the manner afterwards disclosed to the public, the danger to which he was exposed, and stated the reasons for doing so. There are three witnesses called (I do not cavil at the wisdom which presides on this occasion) to prove what would not have been disputed, namely, that the room in Cato-street was taken, and that Davidson was seen about it from time to time, that serves for a parade to support the witness, it seems to say, you must believe this man—here are our three witnesses who swear they saw these persons at the room before the explosion, and that they were carrying things in. But this does not weigh one feather in the cause, it is utterly unimportant, and these are all the confirmations in direct terms. How is there collateral confirmation? I put out of the question here that which affords no confirmation of the witness, because the witness has stated none of the facts; I do not mean that you should forget Mr. Underwood's man, who sharpened the sword for Ings, or the pawn-broker from whom the blunderbuss was redeemed—no doubt, if ministers were to be murdered, it was convenient the persons who did it should be armed, and therefore, it is not necessary to observe upon that: that the sword must be ground, and that the blunderbuss must be redeemed, is consistent with the plan of murder, without adding any thing beyond—and it does not confirm that witness, because he stated no one of the facts, except that Harrison, like every other cavalry soldier, knew how the barracks in Portman-street were situated.

Now, what other confirmation arises from the evidence of other men who have been brought forward, as connected with the cause? The Attorney-general has most justly said, "Although I dwell so much on the evidence of accomplices," applying that to the witness Adams, and to another of the name of Monument, "yet there are witnesses whom I shall call; namely, Hiden, and an Irishman, Dwyer, who are not accomplices, and require no confirmation;" that is true; and if their evidence collaterally and independently could be implicitly believed, it goes to support the facts, though it is not directly given in confirmation of the facts advanced by the principal witness; but undoubtedly they do aid your belief of that which the principal witness has stated.

Let us examine Hiden's statement. He says, that "a long time ago, during the life of his late majesty, he met with Wilson, one of the conspirators upon this indictment, and that he had no acquaintance with any of them but him," and I believe never saw any one of them but him. He says, "I was formerly a member of a shoemaker's club; I knew Wilson. A few days before the 23rd of February, I saw him. He proposed, if I would be one of a party to destroy his majesty's ministers," and, most curiously, he says he used these very words "at a cabinet dinner,—they were waiting for one, and all things were ready; they had such things as I never saw, and which they called hand-grenades. They depended on me to be one, and he said, Mr. Thistlewood would be glad to see me:—they were to be put under the table, and they who escaped the explosion were to die by the edge of the sword, or some other weapon:—they were to light up some fires, which were to keep the town in confusion several days, and then it would become a general thing." That was his conversation with Wilson:—then he says a thing which does him great honour, that he stated to lord Harrowby the danger in which he was, but he did not state any general revolution, or any ulterior design. He went first to lord Castlereagh, who seems to have been an object of particular spleen, and then he went to the most obvious of the cabinet ministers, and made a communication to him, which was to have the effect of preventing this plot taking place. On the 23rd he says he saw Wilson again, between four and five in the afternoon; he had never been at the place; he had taken no measures, but he saw Wilson again on the 23rd, between four and five in the afternoon, he met him in Manchester-street; Wilson said "I was the very man he wanted to see, there was to be that night a cabinet dinner at Grosvenor-square; I was to go to the Horse and Groom in Cato-street, or to stop at the corner till I should be shewn into a stable close by." It was to be by six, or a quarter before; he said there would be between twenty and thirty; this then was the whole force to murder the ministers, and this is the force by means of which it is to be imputed that they were to effect a revolution in the country; this is matter of mere speculation in the mind of this person, and of him alone, for no man else concurred in it, or supported it. He said "there were to be a party in the Borough, another in Gray's-inn-lane, another in Gee's-court, or the city," that is somewhere at the further end of Oxford-road, or somewhere beyond Temple-bar. He said "all Gee's-court were in it, but would not act till the English began, because they had been deceived so often. I understood the inhabitants to be chiefly Irish." This is the conversation which he represents to have taken place with Wilson, only not acted or concurred in by others; and whether Wilson was the deceiver or the deceived, that was his conversation; but how truly it could be the intention of a man's mind

to carry this plan into effect, it is for you to say.

Hidden says, "I told him I cannot go with you now, because I am ordered to carry some cream to a customer of mine;" and supposing it might put six-pence in the pocket of this man, or one shilling or half a crown, the whole of the plot vanished before him, and he goes to buy his cream, and leaves the plot to succeed or fail as it may, giving himself no further trouble about it, for he is unconnected and unconcerned with it, not going again to lord Harrowby, and saying, "My lord, be on your guard, the peril I announced is imminent; I know it, for I have met the man who communicated it to me." Not a word of all this, he is so fearless of danger that he goes to buy his cream—he will not sacrifice a six-pence; he knows no such thing is intended as a revolution, and therefore he pursues his quiet occupation of purchasing cream, and gives himself no further trouble about it. This is not the way a plot to overturn government should be proved—a talk with another man in the street, who is too idle to give up six-pence; that is not the manner in which revolutions are effected, and states brought into danger. That is all that is material in this man's conversation. I do not say (and I will not lay myself open to observation, by seeming to suppress what I shall be supposed to fear), that this is not matter to enter into your consideration: but so far from proving the case or supporting the witness Adams—unless you believe Adams—it does not weigh a feather in the scale; and that you cannot believe him, I have laboured for a long time to shew, for which I ought to pray your patience; but it has been in vain, if I have not made some impression on your minds tending to convince you his evidence is not to be relied on, but that he must be dismissed from your consideration.

Then we get another witness of the name of Monument, a person present at the time of the final explosion in Cato-street. He, it seems, comes newly into the affair; he has never been at any of the consultations; therefore, with respect to them, which are the material points where confirmation is wanted, the witness Adams is not confirmed in the slightest degree. They call the man, Monument, who was not present at any former meeting, to state what happened at Cato-street; and he declares most positively that he has no recollection or consciousness of having seen so remarkable a man as Adams there: he does not remember, nor has he any belief in it; he tells you something most important to notice hereafter, but I think he does not say any one word tending to show that any thing entered into the contemplation of the parties beyond the murder of the ministers at their cabinet dinner; and perhaps creating some confusion afterwards, of which they might take advantage in the way of a general scramble, rockless of life, so that they got some share of property.

That is the evidence of Monument; and

there the case would be left, but for the very extraordinary and very incredible testimony of Dwyer, given as it is, and under all its circumstances. This Mr. Dwyer is a very honest bricklayer, who has worked (according to his own account, and we cannot contradict him at present) for one master for thirteen years, who lives in Gee's-court, and is supposed to have some influence there; he says he was invited to engage them to rise in insurrection, and he promised to do it from fear, but at the same time his conscience told him that it was a bad thing, and he told the person he was speaking to (I believe Thistlewood) that it was a very hard thing for him to inveigle the minds of innocent men. Why, if it was a hard thing to inveigle the minds of innocent men, the man whose perceptions of right and wrong went that extent would see it was of vast importance to prevent the consequence, and he should have been one of those who gave information on the subject, but he does not in any degree state himself to have given such information till after the 23rd of February—on the 23rd February—

Lord Chief Justice Abbott.—Within an hour.

Mr. Adolphus.—I thank your lordship for suggesting it;—he disclosed it to major James within an hour after the communication was made to him, namely, on the 23rd of February, and major James advised him to go to the Secretary of State. I forget whether he went or not. If there were no persons behind in this—if there were no emissaries to give accounts that would serve certain purposes, and swear to them afterwards—this man's evidence would be of more importance than it is; but as it is, I submit to you, that impeached as his credit is by the evidence brought forward with respect to him; impeached as it is by all the circumstances of incredibility attending him, it does not deserve belief in support of the proposition of a plot to overturn the government.

Let us see what the evidence is as it is taken down for me. "I became acquainted with Davidson some time before the 23rd of February. I had seen him twice; he introduced me to Thistlewood about the 9th of February. Thistlewood said nothing to me particular—that he had been in five or six revolutions" (I do not know what they call revolutions now-a-days, gentlemen, nor where he found them) "but however he said 'that Ireland was in a disturbed state.'" Now I should have thought Dwyer with his Gee-court acquaintance must have known that as well as himself, "that he had a good many of my countrymen. In the afternoon of the 22nd, I saw Davidson, who said he was going on sentry."—These communications had been going on from the 9th till the 23rd.—"On the morning of the 23rd, Harrison called on me, and took me to Fowcourt," there, he says, he had a bundle wrapped up in a paper. "We went to a two-pair back room, in which there was nothing but an old chair. Thistlewood, Davidson, and a few

more came in; Davidson had a blunderbuss, a pair of pistols, and a bayonet in his side pocket; there were one or two others came in, Brunt is one of them. When Davidson produced the pistols, he said he had given twelve shillings for them, and Brunt said he would go and buy a pair. Thistlewood spoke to them all at large, and said some of the hand-grenades were to be thrown into the horse-barracks: "there we come to something of a contradiction, upon which I shall observe by-and-by. "Thistlewood asked me, how many of my countrymen I could muster for half past eight o'clock that evening, and I said about twenty-six or twenty-seven. I was to be at the Pomfret-castle, at half past six, in Wigmore-street, and I was to take a few of the best of them to the Foundling, and knock at the Porter's-lodge, and put a pistol to his breast, and to turn round on the right hand, and there were twenty-five or twenty-six stand of arms." Now that is a new plot which Dwyer imports into the case, and not one tittle of this has been communicated to any of the parties on any former occasion. They were to make a breach, to get cannon in Gray's-inn-lane and Finsbury. "Thistlewood mentioned the cabinet dinner at lord Harrowby's. I saw a bundle taken out of the cupboard, it contained gunpowder; a tin measure was taken out, and it was measured out in bags by Harrison; it was said a dozen pike-handles were to be taken to Mary-le-bone, the remainder were to go some to Finsbury, and some elsewhere."

In all this, there is an appearance of riot, and an intention to do something or other beyond the murder of ministers; but I deny that there is any one disclosure of any intention to carry the matter further than the assassination and plunder of the moment—of any intention to overturn the government and effect a revolution, and there is not a tittle of mention of a provisional government.

With respect to other circumstances, which cannot lie or deceive you, namely, the arms and ammunition found—this, I believe, as far as my judgment informs me, is all the confirmation the first witness has received. Unimportant as this confirmation is to the proof of a design and intention to depose the king, let us see whether in any part Adams's evidence is supported, and I think you will find it falls to the ground like the card-house of a baby, directly the finger of a human being is applied to it;—there is not a thing that can stand on this testimony, and there is this curious circumstance attending it, which would alone destroy that which is much better combined than this, which is, that no two of the witnesses ever saw one another. Hiden never saw Adams, never saw Monument, never saw Dwyer; so with the others, they never saw one another; and which is most curious and most extraordinary, the man of all work, Mr. Adams, never states he saw any of the other three; they avoided each other in order to support each other; and you are to take it, that they support each other

because no two of them speak to the same facts. Dwyer says, on the morning while the pikes were in agitation and the cartridges about, he was in the room at Fox-court. Adams says the same thing, and yet they did not see one another. Adams says, that upon that morning, and during the same transaction, flinting the pistols, I think, preparing the ammunition, and so on, he was there, and most extraordinary it would be that these two should never meet. Hiden is never met with or seen, nor his existence known of by Adams; and no man ever sees Dwyer, or knows of him, except a single individual person. Monument is never seen by either witness; and Monument, like Wilson, is so cold about the plot, that when he has a pair of shoes to mend for a customer, he says, I shall get a shilling by the job, and I will have nothing to do with the plot, and he declines the interview on that ground; and these are the mighty plotters who support each other on this formidable conspiracy, and on whose united credit you are to believe this story.

I say, upon this mean and empty plot, so void of judgment and common sense, so incapable of effecting any danger to the state, so certain to effect that which was just meditated—the murder of the party of persons intended, that it is a plot beneath the attention of government; and instead of an indictment for high treason, a common process to convict them of murder would have been sufficient. I submit that it is a plot not worth mentioning—that a wise government might well have overlooked, and a strong government have despised, even if they believed it to the extent they have been able to state. An act of assassination, which would plunge the whole nation in tears and misery, is the operation of a single individual, however incapable of good, however unimportant in the ranks of society, and nothing can be done too effectually to guard against such an operation, by any means that can be devised or applied; but in comparison with an act of high treason, it is, to use the words of a late inestimable writer, "the chirping of the grasshopper in the field, while the stately ox feeds on, regardless or unconscious of the noise"—so might a wise and strong government,—I do not mean to impeach either quality in our government,—so might they have treated this miserable plot, and not have brought forward this apparatus, to convict as traitors, a dozen miserable beggars, irritated by hopeless misery, and impatient through extreme poverty. Such are the elements upon which artful wickedness can work; and such are the victims which resolute villainy can expect to sacrifice. But, I beseech you to remember, that if you find these men guilty on the evidence of Adams, there is a premium for perjury, and an end of all security.

But referring to Adams, I have explained in what points I consider him to have been confirmed and supported. Now, let us see in what he is materially contradicted, and when I say

materially contradicted, do not let me be taken to overstate the matter. Witnesses have been called to prove, from small circumstances, that this man must be telling the truth; if, from any of these small circumstances, you conclude he is telling the truth, then I submit with confidence, that the value of one contradiction by his associated witnesses, surpasses ten thousand such confirmations. When I say associated witnesses, I do not mean associated in the crime, but in the cause; I say that the evidence of all these to a hundred points, does not weigh so much as their contradiction as to one.

Now he describes that two or three meetings a day, of considerable numbers — the greatest fifteen, and in many instances eight, nine, or ten—took place in the lodgings; is he confirmed in that? the buildings in town will tell you how frail the buildings are in Fox-court, but the landlady knows and hears nothing of these frequent meetings except one on a Sunday. There are meetings to which I beg your attention, at one of which all was tumult and confusion; at another men flew at him, one like a bull-dog and the other like a lion, yet the landlady and the apprentice were in a state of unconsciousness of such tumult and confusion. The landlady and her niece, one being at home attending to the concerns of her family, and the other occasionally out on business, so that she knew less of the matter; but the landlady who was almost always at home, and the apprentice were called, not one of them giving the least countenance to these meetings, at which alone, if you believe Adams, the plot was disclosed, and if you do not believe him, the plot flies into the air with the mere effusion of your disbelief.

I beg your attention particularly to his statement as to Cato-street, and I hope it exists in your memory. At Cato-street he states there were twenty persons exactly, and divides them by eighteen and two: Monument says with equal positiveness, that there were twenty-five, and he says Thistlewood being called upon to enumerate the strength and dispose of it, distinctly stated, we are twenty-one here, and those below four. A witness who pretends to be confirmed, should be confirmed in all his circumstances: now in these two he is rather contradicted than confirmed. But he says, at Cato-street there was one candle only, and it is important to say so. Now here are the two officers, and one of them, Ellis, declares he saw eight candles all alight, and that they were put out at the time the pistol flashed: this is a point of contradiction, upon which there cannot be a mistake; because if there were but one or two, that is a fact easy to be ascertained; if the witness had said there were four or five candles, or more or less, I should not have addressed you upon that part of the testimony as being contradicted, but I do say that here it is materially, effectually, grossly contradicted.

But we advance to another contradiction,

much higher; he says (and he makes a speech for him), that the first officer who made his appearance, that is, Ruthven, said, "Here is a pretty nest of you! Gentlemen (for he used that expression I remember very well), gentlemen, we have a warrant against you, and so surrender your arms." What do Ellis and Ruthven say, was their expression when they came into the room?—Did he say, here is a pretty nest of you? no, no such expression; that, like all the rest of the garnish and ornament of this story, is a pleasant fiction of the witness Adams.—Did he say, gentlemen, we have a warrant against you, therefore surrender your arms? no, the words which both the officers stated, and they agree in them exactly, are these,—“We are officers, seize their arms!” Now, the distinction I take is this, with respect to this contradiction; he would know in prison, that the officers had said something, and he would invent that which would do most service to the cause; therefore he invents the circumstance of their declaring they had a warrant—therefore he invents the expression, here is a pretty nest of you, therefore he invents that—which both the officers knew to be false, and contradict it accordingly. If the officers had said, we used a great number of expressions, we said there is a pretty nest of you, and so on, and he only repeated part of the words, it would not have been an impeachment of his testimony; but if a man adds the whole matter, the whole pungent matter, you may be sure it is a fabrication; and if the witness who stands before you, lays his hand upon the Gospel, and invokes God to help him as he speaks the truth, does not respect the Gospel or God, and does not speak to the truth, it is impossible you should give him credit in any degree, much more that you should on his testimony deprive such a number of your fellow-creatures of their lives.

But besides being contradicted by others, he contradicts himself. Always bear in mind, gentlemen, that he has been in prison, and therefore he cannot have assisted his memory, however he may have exercised his invention: He stated that upon two occasions of long continued meetings in Fox-court, Strange was present—Strange is put to the bar, and the witness is asked does he know him, and he says no. He is put to the bar with two others, with whom he is not acquainted; this man, who was twice with him in Fox-court, in the day time, he does not know! If he had remembered ten out of the eleven, there would be no danger in saying this man was Strange; but being one in three, he could not invent. This is a trying, a strong, circumstance. If he has deposed the truth as to the meetings, he must have known Strange as well as he knew the others; but he does not know Strange, and unless some better reason can be given for that than I can devise, a witness, whose whole evidence is composed of such absurd improbabilities, and who comes to disclose his own

went of certainty, cannot be believed by you in any particular.

I have stated to you, and I have made it my theme all through this address, that Adams has not been confirmed to the extent he might have been, with respect to that which is alone material for you to inquire into, namely, the treasonable combination of these parties. I have looked, according to my instructions, to the list of witnesses for the Crown, I find the name of one Edwards, living at 166, Fleet-street, lately abiding in Ranelagh-place, not a prisoner—not taken up upon this charge—not tainted as an accomplice by government—no treason that we have known of against him—a man cognizant of all the facts—a man present at all the conversations—a man who pointed out the New-Times news paper, and saw and knew and guided every thing, and yet that man is not called—the spy is not called to support the informer, because the contrivance would have been made evident by his cross-examination, and therefore that man, like another spy, is kept back from examination; because one spy, who in another case, where Thistlewood was a party, and had been previously examined, was, by the eloquence and ability of counsel, and by his own infamy, blown out of court;* when such a man as that, who could have told you all the facts, who made the fuses himself, who was so active, so ministerial in every part of the transactions, is made to abstain from giving the support of his testimony to these plots, said to have been agitated, matured, and contrived in his presence, what are we to say, but that the plot has no foundation in reality?—and if all the circumstances could be investigated, it would prove that the treasonable part is altogether the brewing of a spy and an informer, to implicate in a charge of high treason, a man who had gone far enough toward losing his own life, but not to the length of that greatest of crimes. The manifest aim and contrivance had been to foment, and afterwards disclose to public view, a secret conspiracy, to which they had afterwards added fictitious circumstances amounting to high treason, for purposes to which government, if rightly constituted, would not lend itself, but which bad men are wicked enough to mature and to perfect, by appealing to the fears they have excited, and giving the best appearance they can to their false information.

The Attorney-general addressed himself to you in this way; what is to be said in answer to this case? Is it to be said, that because the plot which will be described to you is an improbable one as to its success, therefore, you are to believe such a plot did not exist? Will you disbelieve it on that ground? Gentlemen, I think very humbly of myself, and I should think that the most inexperienced advocate at

the bar would not have the rashness to advance such an argument. It is not because it is improbable that the plot is to be disbelieved; if so, history would be at an end. Need I illustrate this statement, by adverting to a most familiar instance, the earl of Essex's* plot, in the reign of queen Elizabeth, a nobleman of his rank, in a moment of moody displeasure against his gracious sovereign, whose power and wisdom he well knew, and to whom he had been infinitely obliged, suddenly and furiously rushed into the streets of London, and excited the citizens to follow him and take the state by storm; the madness that inspired him, if it was stated as a reason for not believing it, would blot from history one of its indisputable authentic pages. The earl entertained vain expectations; he put them in action by a very foolish course of proceeding, and he met the fate which such circumstances always must lead to. He was tried and executed for high treason: I do not disbelieve his plot; nor should I disbelieve the plot stated to day, if it was disclosed on certain testimony, and had been so communicated as to encourage belief in the facts. It would be in vain to reason against the facts, because they are improbable; if we admit them as facts, all reasoning about their probability is at an end, and we can only lament that men should form bad hopes upon such miserable foundations. I do not ask you to disbelieve this plot because it is improbable, but I ask you to disbelieve the witness because he has sworn to an improbable plot, unsupported by facts, and himself not corroborated by witnesses who might have been adduced. It is therefore that I bring to the test the possibility of this plot, and think I do not go too far when I say it is impossible you should believe it. Each man, and every individual feels for himself the particular emotions of fear and anger, which particular circumstances excite. I am not imputing to any man a base and unmanly fear—but when the table was strewn with pikes and fire-arms, and a thousand ball-cartridges, as the word escaped from persons near me, so it might have come to you, how should I like one of these pikes thrust at me; but who is there among us, inept and foolish enough to believe, that such an arsenal, backed by such a park of artillery, without a single pair of horses which would grace a hackney-coach to move it, could have been used for the purpose charged in the indictment? Such weapons and contrivances are the natural adjuncts of men who mean to begin in murder and end in plunder; but it is absurd to suppose they could contribute to the downfall of the state and the subversion of the empire. One of the party, when he was taken, had two dozen cartridges upon him: now, divide 1,200 by 24, and I think you have arms for exactly fifty men. These are the means to overturn the state; but where are the fifty men, and where are the guns for these fifty men?—two or three

* The witness Castle, on the trial of James Watson the Elder, in the preceding Volume.

* Vide 1 How. State Trials, p. 1333.

wretched swords, and two or three miserable muskets, less than would be fit to protect a band of street robbers. In times when gentlemen carried swords and pistols with them, they would not have enabled a gang of highwaymen to execute one night's adventure.

This is the test of improbability and of impossibility, to which I bring the evidence of the wretched witness, on whom this whole case rests; and when I come to state my defence, see whether that does not, in every particular, and in every part of it, range itself under the evidence, and prove most distinctly what I have stated to you. With respect to a great part of this ammunition, let it not be forgotten, that the night before the transaction at Cato-street it was taken away; and that a very short time indeed before the officers came to search the box which contained it, it was, by some ingenious person, not friendly to the prisoners, placed in Tidd's lodgings, as the means of conviction and the source of condemnation. There is no doubt these unhappy men have been most malignantly tampered with; they were first exasperated to a design of limited evil, it was afterwards aggravated so as to favour the plans of those who wished to give it the character of high treason, and then they were betrayed.

You have been told, that the name of Thistlewood cannot be unknown to you. You know perfectly well, that the unhappy man at the bar was only three years ago a supposed culprit in the same degree as now, and was tried and acquitted; he afterwards suffered an imprisonment; and only in June last was liberated from Horsham gaol, where he had been confined for sending a challenge to lord Sidmouth, one of his majesty's ministers, the Secretary of State for the Home Department. This man, coming with a rancorous mind and a bad temper out of a prison, to which he had been sent on the prosecution of that noble viscount, is the very element which an artful man would work upon, in suggesting a plan for murdering his majesty's ministers. Immediately after, on the 16th of August, comes the fatal narrative of that transaction at Manchester, to which I do not mean to give a name; but you all know, who have read or conversed on the subject, how much that transaction agitated every mind, and how free and strong were the opinions which many men expressed upon it: here came the means by which to bring together every feeling and motive of a dissatisfied person to point out (and it was done in many cheap papers) the ministers as the cause of all the evil, and as men placed above the law, and therefore devoted to vindictive punishment, without recourse to the law; and can we suppose this was all written and said in vain, that no minds would be found weak enough to believe in it, no tempers sufficiently inflammable to act upon it? This is the real origin of the transaction; here you have the proposition of the plot exactly as detailed—a rash set of men

who are called radicals, and who thought good would result from it, meditated to effect that horrible design (which was less extensively attempted in the assassination of Mr. Percival) to massacre all the ministers. Now, Gentlemen, take this with you; does it or does it not agree with every thing that you have heard?—here is Mr. Thistlewood inflamed with personal anger against one of his majesty's ministers, but most probably against more;—here are others swayed by the hopes of undefined good, if they could get rid of these persons, and imbued with an opinion, that in their instance, assassination is only an irregular act of national justice: I say, these men so instigated, were likely to be allured by a proposal to kill as many of the ministers as they could at one blow:—first, they hope for a cabinet dinner—that does not take place, then do they devise means for an insurrection? no, nothing like it—but to separate themselves into small divisions, and murder each minister at his private house: then comes the convenient and never to be forgotten announcement in the *New Times*, placed there to betray them, and to that they addict themselves, and by that they are to be sacrificed.—Ings is represented to be the foremost man, in the project of murder; but let us see whether to the very last the revenge of the Manchester transaction was not chiefly, if not alone, in the minds of those people? you will see, that by a speech imputed to Ings, he said at one of the meetings, “I shall go forward into the room, and say, Well, my lords, we have men as good as the Manchester Yeomanry; enter citizens and do your duty;” in all this is there any declaration that the king has reigned long enough, we are tired of his family? is there the least talk of an attack on Carlton-house, or of besetting his majesty, in his walks or rides, in going to parliament, or in coming from it?—no not a word of it—no talk of making away with any one of the royal family, from the eldest to the youngest, from the highest to the lowest—no, but the proposition is, that the matter was to begin with the massacre of ministers, whom they hated, and whom, instigated by the vilest of men, they thought they had a right to hate. Having effected that which they considered an important public service, by that massacre, it became necessary to consider, what they should do next; except the private enrichment that might follow from the conflagration of houses, and the plunder, there is nothing in the plot to which the least probability can be ascribed. When I speak of the burning of houses to effect robberies, some of you can perhaps remember when that plan was carried to a considerable extent; it was in the days of my youth, when a timber yard in Long-lane, was burnt, for the sake of plundering a pawnbroker's close by; the same means might present themselves to those who are clamorous about their poverty, who begin by saying the shopkeepers of London are all aristocrats, and

are all working under one system of government, and there is not a man worth ten pounds, who is of any service to the state; and that they themselves are so poor, that in three days crime must be perpetrated, or they must be starved. These are the men upon whom, from these circumstances, some spy, setting on some informer, collects facts and declarations out of which he may fabricate the story brought before you to-day.

I shall not take up your time by adverting to the contradiction or the explanation afforded by the witnesses I was instructed to examine. The credit of Dwyer is in your hands; you have heard what a man whom I called has said about him. My clients are too poor to get together the necessary witnesses—they are too poor to support their wives and children while they are in prison; they come therefore naked amidst all these perils. If you believe Dwyer, I am far from thinking he makes out a conclusive case; but I think, considering the improbability of his story, and the nature of his character, it is for you to reject his evidence, more particularly from his never being congregated with any persons who have given evidence.

One person has been tendered to me as a witness whom you inquired after, and I might examine. I have already had to advert to what there is of technicality in our profession, and if there is one rule more inviolable than another, it is this, that we never do call or examine a witness, who has not previously disclosed what he can state; because if we were to do so, no man knows to what purpose he might be calling witnesses—no man knows to what effect they might be examined. I do not fear calling the witness, but a point of honest prudence, by which I am obliged to square and govern myself, makes me observe those rules, from which I could not depart without incurring more censure than any man could wish.

I believe I have gone through all that is necessary to be said on the present occasion; perhaps I have taken up an unwarrantable portion of your time. I feel in my own breast much reason to lament that I cannot have done justice to the subject: I am not guilty of a vain expression of mock modesty, nor do I pretend a diffidence which I do not feel; but when I observe to you, that one of the best scholars and lawyers at the bar, a man of eminent rank and in great practice, thought it necessary to declare on a former occasion, that he had spent a whole month in anxious reading, to qualify himself for the discussion of one day, you will hardly think I am guilty of any dereliction of proper firmness when I say, I fear and tremble at what I have done, in my endeavours to save the life of this unfortunate man and his associates. I have had but a few hours to consider the case at all; and it was only after four o'clock this morning that I could qualify myself to come before you, imperfectly as I have done to-day. But on this occasion, where I feel

doubt and anxiety, and tremulous apprehension, I throw myself on you,—the protectors of the public, the shield of the accused,—if you can have such implicit confidence in the witnesses on the part of the Crown, as to give credit to all they have said, pronounce your judgment; as it becomes me, I shall submit with perfect and unrepining acquiescence. But if, from the observations I have made, or those which your own minds have supplied, you doubt the evidence, then, fearless of the consequences, and in the proud discharge of your own dignified duties, act according to your conscience, and acquit your souls between God and your country, by declaring that the man at the bar is not guilty—or to use a better phrase, that the charge is not proved to your satisfaction.

I am aware that with all my labour, I must have left many things imperfect through my own feebleness; I therefore betake myself to the refuge of the feeble, to prayer; and I pray the God of our ancestors, the God “by whom kings reign, and princes decree judgment,” to amplify your minds, and to touch your hearts, to enable you to arrive at that decision which justice requires; always remembering, that justice is most lovely and most venerable, when tempered with mercy. I know that if the impression of the present case call for the exercise of the more stern and manly qualities, you will do what justice requires; but if topics of compassion, of doubt, and of hesitation, suggest themselves, let the prisoner have the benefit of them;—and whether the prisoner's life shall be lengthened to the term originally assigned by Providence, or terminated on any other charge with the expiration of the coming week, he will have to bless you, and posterity also will bless you, for they will feel that they may rely with security on the justice of a British jury.

Lord Chief Justice Abbott.—Arthur Thistlewood, if you wish to offer any thing from yourself to the gentlemen of the jury, in addition to what has been addressed to them by your learned counsel, you are at liberty to do so, and this is the proper time.

Thistlewood.—I should wish two witnesses to be examined who are now in Court, against the testimony of Dwyer, a man of the name of Edmond Ward, to swear he had extorted money from him.

Lord Chief Justice Abbott.—You must not state that; the time for giving evidence is passed; the evidence was gone through last night; but at the request of your learned counsel the Court was adjourned till to-day, it would be breaking through all the rules of proceeding to allow any such evidence now to be given; if you wish to address any observations to the jury now is your time.

Thistlewood.—I am quite satisfied, my lord.

REPLY.

Mr. Solicitor General.—Gentlemen of the

Jury;—In rising to address you in support of this prosecution, I have a most painful and anxious task to perform. As the servant of the public, I am bound to discharge the duty which I owe to the country to the utmost of my ability and power, and I feel anxious, therefore, that nothing on my part should be omitted that may be necessary for the purpose of presenting this case in its true colours before you. On the other hand, however, I feel equally solicitous that in what I am about to state I may not misrepresent a single fact, or press a single argument against the prisoner further than the justice of the case may absolutely require. And I beg leave to join with my learned friend who has just addressed you, in praying that you will dismiss from your minds all prejudices and previous impressions unfavourable to the prisoner;—that you will forget, as far as it is possible, all that you may have heard upon the subject of this prosecution, every thing that is not established by proof,—and that you will confine your attention solely and undividedly to the evidence which you have heard from the witnesses who have been sworn in the cause. But I feel that in this request I am urging that which is unnecessary and superfluous; I am addressing an English jury, sworn to administer justice impartially between the public and the prisoner; and I ought therefore to apologize for intimating a doubt that, in the discharge of so important a duty, you can suffer your attention to be diverted for a single moment from that evidence by which the fate of the prisoner must alone be determined,

The situation in which the prisoner now stands affords an admirable illustration of the excellence of that system of laws under which we have the happiness to live; a striking proof of their being built upon the firmest principles of justice and freedom. It is admitted that he had projected the assassination of all the principal ministers of the Crown. It not only is proved in evidence, but it is distinctly admitted by the counsel for the prisoner, that such was the intention which he had harboured in his mind, and which he had actually prepared to carry into execution; you have it proved, that by the prisoner's own hand, that unfortunate man whose name has been mentioned in the course of these proceedings, met his death. Yet while that passion and prejudice which these circumstances were calculated to excite in the public mind existed in its first violence, he was not, and could not be put upon his trial for the offence with which he is charged: he was entitled to such an interval as might afford an opportunity for that feeling to subside, so far as it was capable of subsiding. He was further entitled, before he could be put upon his trial, to that which is never allowed in any other criminal charge affecting a man's life, to have delivered to him all the particulars of the accusation which he was to be called upon to answer, not yesterday or the day before, but nearly three weeks I believe from the present

time, in order that, consulting with his counsel, he might have full opportunity to avail himself of any objections in point of law, which he might have to urge against the sufficiency of the charge. In addition to this, he has been allowed that important privilege which is conferred only upon persons under the heavy accusation preferred against the prisoner,—he has had a list of all the jurors who could by possibility be called to sit upon this trial. He has had an opportunity of rejecting arbitrarily to the number of thirty-five, any who might be called to constitute the jury in which he is so much interested; and it may therefore be considered that you, who are now to decide upon his fate, are a jury of his own selecting. In addition to all this, and which you will find most material in the progress of this inquiry, he has had a list of every witness who could be called on the part of the Crown. That list has been furnished to him, in order that he might have an opportunity of inquiring into the previous character, the previous history and conduct of every witness who might be called against him, in order that he might have an opportunity of being prepared with evidence to impeach the character of such as would admit of impeachment. Such, too, gentlemen, is the benevolence of the English law, that he has been allowed to apply to the Court, to appoint such counsel as he might think proper to select, for conducting his defence. It is therefore too much to say, as has been urged by the counsel for the prisoner, that a person standing in his situation has to combat with peculiar disadvantages and difficulties, since in no other situation would he as a prisoner have experienced advantages or benefits comparable to those afforded on this occasion, in order to enable him, according to the facts of the case, to prepare for his defence, against that most serious and solemn charge now preferred against him,—a charge of conspiring to overturn that constitution and that system of government, under which he is entitled to such inestimable privileges; and that, with a view of establishing some other form of government, in which the establishment of advantages of a similar character and description could never reasonably be expected.

This is the charge preferred against the prisoner at the bar; and when I mention the grave and serious character of the accusation, I merely repeat the language of my learned friend, and with the same view, namely, to call upon you to be careful that you do not, on light and general evidence, find the prisoner guilty of so grievous a crime; that you will bestow upon this inquiry that anxious and careful attention which its importance demands; and that you will not deliver a verdict of guilty against him, unless you are satisfied of his guilt on the clearest evidence. At the same time, however, if that is the impression which shall ultimately be made on your minds by the evidence, then, fearless of consequences, looking neither to the right hand

nor to the left, without bias and without favour, you will, I am persuaded, firmly and faithfully discharge your duty to your country in the judgment which you shall pronounce.

With respect to what has been said upon the law of the subject, it cannot I think be necessary for me to trouble you with any observations. The charge preferred against the prisoner at the bar has nothing in it that is technical—nothing that is difficult of apprehension. It is in its character and description the plainest that can possibly be conceived. He is charged with having conspired to overturn the government of the country, and with having among other means endeavoured to accomplish that object by the assassination of his majesty's ministers. If you find that he is guilty of having so conspired—if you find that he has been concerned in taking measures for the attainment of that end, then in point of law he is guilty of the crime which is imputed to him upon this record; and therefore, saying nothing more upon the law, but directing your attention simply to the facts, you are apprised of the substance of the charge, and it will be for you to say whether it is made out to your satisfaction in the evidence which has been offered in support of the accusation.

There are some facts admitted on the other side, of a most striking and extraordinary character. It is admitted that the plot which I have stated was formed for the assassination of his majesty's ministers, not for the assassination of two or three individuals among them, against whom the prisoner at the bar might be supposed to entertain some personal enmity, but the project was, at one blow, to destroy all the confidential servants of the government. This has been admitted in the most unequivocal language, in the broadest and most distinct terms, by the counsel for the prisoner. The object which the parties to this project had in view, was, as we state, and have proved in evidence on the part of the prosecution, to overturn the government of the country; and the object that is suggested and supposed on the other side, but which is not attempted to be proved, is, that this plan was formed merely with a view of plunder, and for the purpose of creating confusion, of which plunder alone was to be the object. I remember, however, that my learned friend, the counsel for the prisoner, who now sits near me, in the course of his address to you yesterday, stated that the whole of this criminal design arose out of political motives and political views. If this attempt to assassinate his majesty's ministers did then arise out of political motives and political views, what ground is there for that fanciful speculation of the gentleman who has just spoken, that the object of it was to create confusion, not with a view to revolutionary projects, but solely for the purpose of plunder? And when my learned friend is speaking of the visionary project attributed to the prisoner at the bar; when he talks of its extravagance—how improbable it is in all its parts—and

what strong evidence you ought to require before you can bring your minds to believe it, I ask with confidence, whether the suggestion which he has made as to the object which these parties had in view in the assassination of his majesty's ministers, namely, that it was solely with a view to confusion and plunder—whether, I say, that is not in a tenfold degree more improbable, more absurd, more extravagant than that which I have stated as the motive, and which we have proved by the numerous witnesses called on the part of the prosecution?

I shall now beg leave to direct your attention to the evidence. I will not wander out of it to make a single observation that it does not fairly warrant, nay, require from the counsel for the prosecution. My learned friend who has just addressed you, states that this case, as far as the treason is concerned, rests solely upon the testimony of Adams: I beg leave entirely to dissent from this statement of my learned friend. I trust I shall satisfy you when I come to direct your attention more particularly to the evidence, that this is a mere gratuitous and unsupported assertion on the part of my learned friend. At present, therefore, I state that it does not depend by any means upon the evidence of Adams alone; on the contrary, there is in this cause, even if you were to blot the evidence of Adams from your notes, sufficient evidence from the uncontroverted facts proved by witnesses, not impeached or impeachable, to justify and require you to come to the conclusion that the prisoner is guilty of the offence with which he is charged.

But as so much has been said upon the testimony of Adams, give me leave for a moment to call your attention to the situation in which he stands, and to those rules and principles not merely of law but of common sense and reason, which ought to be used in the estimate of the credit due to his testimony. When a person comes forward in the situation of an accomplice, for the purpose of giving evidence against his associates, it is admitted that his testimony ought to be received. If the evidence of a person in this situation were to be always rejected, or, if it were to be disregarded by juries in the practical exercise of their duty, the consequences would be most injurious to the interests and safety of society. For what is the principal defence against dark and dangerous conspiracies of this nature?—The jealousy which men entertain of their associates, and the dread they feel of being betrayed by them. But once establish as a principle that the evidence of an accomplice is to be disregarded, and you lose the strongest and most effectual check against the enterprises of wicked and desperate men. They will carry on their designs without fear and without restraint, when they know that they are secure against the consequences of the cowardice or treachery of their associates in guilt. It would be impossible, therefore, without leading to the most dangerous consequences,

to exclude the testimony of a person in this situation: but when a witness comes before a jury who are to decide upon his evidence, whether he be an accomplice or stand in a less unfavourable light, you are still to consider from all the circumstances in the case what degree of credit is due to his testimony: For I know of no rule of law that applies to an accomplice that does not apply to every other witness who comes into a court of justice. That you will and ought to examine his evidence with more care and jealousy I am ready to admit. But still the question comes at last to this: What is the degree of credit to which, under all circumstances, he appears to be entitled? Let us then consider for a moment, and see what are the tests by which the evidence of a person standing in this situation is to be tried. It is of course most material to inquire into his previous character. If a man whose former life has been correct, lapses in a single instance into crime, and afterwards repenting of his conduct, or alarmed at the danger to which he has brought himself, becomes a witness for the Crown—his previous character is a most important subject of consideration and inquiry.—If you find that to have been base and infamous, you will of course add that circumstance as an ingredient against him, and will be disposed to place less reliance on his testimony. Again, you will ask yourselves what interest the witness has in the story which he is telling. I can understand that if an accomplice in coming into a court of justice is trying to redeem himself by laying the whole weight of criminality on others, that his evidence in this respect should be listened to with great suspicion and caution: but when you find the effect of his evidence is to criminate himself as much as his associates, you will ask what motive he can have to enhance the crime, and to alter its character; and thus to add to his other offences the deep and infamous sin of perjury. Applying this test to the evidence of Adams, I ask what motive can be assigned that should induce him to give a false account of this transaction.

There is another test to which I also request your attention, because it is of infinite importance in this cause. If he is telling a story in which he knows he may be contradicted—if he states that, which if untrue may be proved to be false by witnesses in the power of the prisoner, you will be disposed to place the more reliance upon his testimony, particularly if those witnesses who might be called are not called to contradict him. Lastly, you will inquire to what extent and in what particulars his evidence is confirmed by testimony, from pure and unsuspected sources. And here I beg leave to observe that I agree in the doctrine laid down by the counsel for the prisoner, that confirmation in light, trivial and collateral circumstances, may not materially support the general testimony of the witness; but if you shall find that confirmation extending itself throughout the whole of his narrative—if you

shall find the witness confirmed wherever, from the nature of the case, it is possible he could be confirmed, you will then be disposed to rely upon his veracity. When he is speaking of facts in the knowledge only of himself and his associates, and in which therefore there is no possibility that he could be supported, I think then when I come to direct your attention more particularly to the evidence of Adams and to the tests to which I have adverted, you will be satisfied of the truth of his statement.

First, with respect to his previous character. I have already mentioned that many days (I believe nearly three weeks) before the trial, a list of the witnesses to be called on the part of the prosecution was delivered to the prisoner. I have stated the grounds of this regulation, namely, to afford the prisoner a full opportunity of inquiring into the character of those persons who were to give evidence on the part of the Crown, and that he might be prepared with witnesses, if the facts would admit it, to expose and impeach their lives and conduct. The name of Adams was of course in that list. He had been long known to Brunt, one of the prisoners; he seems to have been acquainted with him when in France; therefore, if there was any thing to impeach his former character, that impeachment might be established by evidence, because Brunt had the means of knowing it. With all these opportunities and advantages, then, has the prisoner been able to adduce any evidence for the purpose of shewing a single blot or blemish in the previous history and character of this individual? You will remember, perhaps, that an attempt was made to insinuate that he had left this country, and withdrawn himself to France, in consequence of some misconduct towards his employer. Upon further inquiry, however, it turned out, that there was not the slightest ground for such a suggestion; and if he had in any way misconducted himself, that individual might have been called to give evidence of the fact, and his absence is a circumstance absolutely decisive in favour of the witness. It appears, that Adams, was by trade a shoe-maker. He had been formerly in the army, and he went therefore to France, for the purpose of obtaining employment in his business, among the English officers at that time stationed at Cambray. The witness, therefore, comes into court free from every previous imputation or stain upon his character; not only has no evidence been adduced against him, but it is perfectly clear, from the facts which I have adverted, that his character and conduct had been such, that no such evidence could have been adduced.

I have already observed—and I beg now to remind you of the observation—that in considering what degree of reliance you can place upon his testimony, you will further inquire what interest he has in the result of this trial. He was one of the persons engaged in the conspiracy; he was apprehended for the offence, and when apprehended, he was admitted as a

witness for the Crown. You all know that a person so circumstanced, must, of course understand, that if he conducts himself with propriety, and tells the truth, he will receive a pardon from the Crown. I would ask you then, what motive he can possibly have to relate the case otherwise, than as it really occurred? What reason can there be why he should charge himself and his associates, with a crime of a different description, and of a blacker die than that in which they were really engaged? And will you suppose that a man without motive, without any reason that has been suggested or even hinted at by the counsel for the prisoner, would add the guilt of perjury to his other crimes, and that too for the purpose of consigning so many of his fellow-creatures to a disgraceful and ignominious death? Is it possible that you can conceive any individual, without at least some motive of interest to himself, guilty of such base and complicated wickedness? Will you not, therefore, require some very clear, distinct, and satisfactory evidence, to lead you to the conclusion of his having falsified the facts of the case, when he can derive no possible advantage from such conduct, and no motive can be assigned for so base and infamous a proceeding?

But there is another observation, which I beg leave to press strongly upon your attention. The witness has told you, that at the various meetings to which he has spoken, different individuals from time to time attended who were the associates of the prisoner at the bar: he has mentioned, among others, a person of the name of Hall, who is at this moment within the reach of the prisoner; he has mentioned a person of the name of Potter, the friend of Brunt (for you recollect upon the morning after Brunt's return, when he was engaged in securing the baskets of ammunition, his apprentice Hale, was desired to carry them to Potter's house, in Snow's-fields); the witness has told you, that both Hall and Potter were at the last meeting in Fox-court; he has told you that Palin was at this meeting, another of the prisoner's associates, and Harris also has been mentioned, in whose house the prisoner was apprehended. All and each of those persons might have been called for the purpose of proving that Adams had given a false account of what passed at these meetings. If his account were really untrue, as the counsel on the other side have supposed, is it possible to give any satisfactory answer to this observation? Does it not carry conviction to your minds? Does it not prove to demonstration, that the account given by Adams, as to what passed at those meetings, is, in every particular correct? If Hall were not present, he might, as stated by Adams, have been called to prove the falsehood of the charge. If, on the contrary, he did attend, he might have been called to prove, that the account which Adams has given of what passed upon the occasion was false; the same with respect to Palin; the same with respect to Potter; the

same with respect to Harris. My learned friend has not ventured to touch upon this circumstance, because his excellent judgment assured him it was a fact so unmanageable and decisive, that it was impossible to give to it even a plausible explanation or answer.

Having then stated in what manner Adams might have been contradicted, if the story which he has related were untrue, let me now direct your attention to the manner in which his evidence has been confirmed,—not as has been suggested, merely in trivial matters, or from doubtful sources; but in the most important particulars, and from the most unsuspected and unquestionable testimony, the whole forming a body of corroborative evidence, so strong and irresistible, that no person who does not wilfully shut his eyes, and blind his understanding, to the force of truth, can, for a moment, entertain a doubt, as to the conclusion to which it inevitably leads.

You will remember that one of the first witnesses called after Adams, was a person of the name of Hale. He was apprentice to Brunt, connected with one of the prisoners, a witness above all suspicion. No questions were put to him on cross-examination, tending to raise a doubt as to the truth of his story; nothing was thrown out for the purpose of leading you to suppose, that there was any impeachment of his character. Now, I beg leave to request your attention—and long and painful as this inquiry has been, I am sure you will give it to me—while I recall to your recollection those marked circumstances of confirmation, arising in the first instance out of the testimony of Hale. He has told you that the room was hired by Ings and Brunt; that they looked at it together; and that Brunt said to Ings, "it will do, go and give her a shilling." Brunt, therefore, was concerned in hiring the room. But where there is guilt, concealment is generally attempted. What was the account Brunt gave to Mrs. Rogers? It appears she entertained some suspicion of Ings. She asked Brunt who he was. He replied "that he was a butcher by trade." "I know nothing of him," he said, "except seeing him accidentally at a public-house." He gives the same account in the presence of the Bow-street officer, Taunton. Is this then correct or false? Does it not appear, by the testimony of Hale, that for good or for evil he was at the very time he was giving this account, most intimately and closely connected with Ings? He tells you again, that after the room was taken, these parties continued to meet there night after night, for the period of five weeks. He names the particular individuals who were in the habit of attending. Now is it supposed, by my learned friend, that this is inconsistent with the evidence of Mrs. Rogers? When the question was put to Mrs. Rogers, she said, "I saw Davidson and some other men once. I cannot say that they met often." But she immediately afterwards explained the reason of this. She said "she

could give no account of it, because she was seldom at home." Here then is Hale, an unsuspected witness, the apprentice of one of the parties, stating upon his oath, that these meetings were held every night, and attended by the prisoners. Does not this then confirm, in a most important point, the evidence of Adams? For what purpose did they meet? Was there any object of business or amusement in which they were engaged, to account for this circumstance? Has any attempt been made to explain it by evidence, or even by statement? Up to this moment has any motive, consistent with the innocence of the prisoners, been assigned for these meetings? It was an unfurnished room, containing nothing but a single chair, Ings having stated at the time when he hired it, that he should bring in furniture, but which he never attempted to do. I repeat it then, do not these circumstances spoken to by Hale, confirm in the strongest manner the testimony of Adams?

Mark another fact. Adams tells you, that arms were from time to time collected in this room, and afterwards carried to the dépôt; he particularly speaks to a number of pike-staves brought there for the purpose of having ferrules put on them. This is the account given by Adams; and here I beg you will recollect that Adams is in custody, and has had no opportunity of communicating with Hale. He is at large, no charge has been preferred, or was ever thought of being preferred against him. He tells you, that one day the door being accidentally open, he observed a number of these pike-staves, to the amount of about twenty in the corner of the room. How does he describe their appearance? They were like branches recently cut from trees.—You have seen them corresponding with the description which he has given. Hale confirms Adams; and the fact is established, that this was one of the places made use of for collecting arms. There is another circumstance connected with these pike-staves, to which I beg to direct your attention. It was stated by Adams, that Bradburn was employed to put on the ferrules, and that it was done in the room. What in this respect is the testimony of Hale? He says, "about the time I observed the pike-staves, I heard a hammering and sawing repeatedly in the evening." Could Adams have anticipated this? These circumstances, at first view apparently trifling, become of infinite importance, in considering the credit due to the narrative of Adams; for it is impossible that they could have been invented or arranged for the occasion.

But there are other circumstances of a character still more marked and decisive. You remember that Adams stated, that on the Saturday, these parties had become impatient. It had been originally intended to make an attack upon the house of one of the ministers, when the cabinet were all assembled at dinner. The death of the king had interrupted these entertainments. There was no oppor-

tunity of carrying the project into effect; and Brunt afterwards stated, in the presence of one of the witnesses (Monument), that the death of the king had altered their plans. Now, to advert to the testimony of Adams. On the Saturday, having become impatient, the prisoner said, "we must have a meeting to-morrow; we must form a committee, and consider what can be done." This was immediately previous to the 23rd of February. You are told by Adams, that a committee was accordingly formed on the Sunday morning; that it consisted of more than the usual number of persons, and sat for a considerable time in deliberation upon the project which they had in view. What is the evidence of Hale? He also tells you that there was a meeting on the Sunday morning, and that it was of a different character from the previous meetings. It was attended by a larger number of persons, and they appeared to be more closely engaged in consultation together. I do not read the evidence as I go along; I wish as much as possible to relieve you from unnecessary repetition; but if you will hear and attend to these observations, and bear them in mind when the evidence is recapitulated by the learned judge, I will pledge myself, that you will not, in any instance, find them built upon any misrepresentation or mis-statement. Should, however, any error occur, I am persuaded, that you, the prisoner at the bar, and all who hear me, will be satisfied, that in a case of this description, it must, on my part be wholly unintentional.

Nothing further occurs in the testimony of Hale, until the day when the project was to be executed. Adams tells you, that about four or five o'clock on that day, he was in Brunt's room; that Strange and another man, whom he did not know, came in and fitted flints into five or six pistols; and that Brunt being apprehensive that they were overlooked by persons on the opposite side of the way, desired them to go immediately into the back room. Hale states the same facts almost in the same terms. In this particular also he confirms the testimony that has been given by Adams.

It is suggested to me that something occurred—but perhaps I am a little out of course in adverting to it now—in the adjoining room when Dwyer was there; and that it was contended by the counsel for the prisoners, that Adams did not agree with Dwyer in his account of that part of the transaction. But you will recollect that Adams told you he did not go to the room on the 23rd of February, till late in the day, till three or four o'clock in the afternoon, and you remember Dwyer quitted the room by one, so that it was impossible that what was said in the presence of Dwyer could have been heard by Adams.

But to revert to the evidence of Hale, you will no doubt recollect another remarkable circumstance of confirmation to which I am about to direct your attention. Thistlewood was desirous of preparing a proclamation not

a proclamation to be posted, as my learned friend supposes on the houses that were to be set on fire, but to be put up near the fires, in order that it might be read by the people. He asked for paper; no paper adapted to the purpose could be procured; something was said about procuring such paper as is usually employed for newspapers, but Adams tells you he suggested that cartridge paper would answer better. Money was accordingly given by Thistlewood to procure it, and Brunt went out and directed his apprentice to buy six sheets. This was stated by Adams. He has had no opportunity of speaking with Hale upon the subject; he has had no means of arranging his evidence in concert with him; but this is the account which he gives: The paper was purchased, and the proclamation written. Hale in his evidence tells you that Brunt came out and desired him to purchase some cartridge paper, and that he accordingly bought six sheets, which were taken into the room, as Adams had stated. In this important circumstance then Adams is confirmed by Hale, as far as it is possible that he could be confirmed; for Hale was not admitted into the room, and of course can give no account of the purpose to which this paper was applied.

Let us look at the case a little further. The parties set out for the place of rendezvous, and Brunt among the rest is stated by Adams to have been in Cato-street, and to have been an active participator in every thing that occurred at that spot. He was not apprehended at the time, having succeeded in effecting his escape. What then is the account given by Hale?—He says his master returned home about nine o'clock in the evening, confused and fatigued; his coat splashed, his boots covered with mud. Immediately upon his arrival, addressing his wife, he said, "it was all over; a number of officers had come—that he had saved his life, and that was all." Does not this then most evidently point to the transaction in Cato-street? Does it not confirm, beyond the possibility of doubt, the testimony of Adams as to Brunt having been one of those who were engaged in that transaction?

There is a remarkable circumstance to which I now wish to beg your attention, because it relates to the ulterior projects which the parties had in view. You will remember Adams stated that the plan they had formed was, to strike a grand blow, by attacking the ministers as they were assembled in Grosvenor-square; but this was only a part of their criminal design. There was another body, not consisting of the same individuals as the counsel for the prisoner has supposed, but of the friends of Paine, as to whom he had asked Thistlewood at one of the meetings whether he might not communicate to them the particulars of the plot. There was also a third party under the direction of Cook, destined to another enterprise; for the twenty-five persons assembled in Cato-street formed only a small part of the numbers engaged in this conspiracy.

Having recalled these circumstances to your attention, let me remind you of what was said by Brunt. A person came in, evidently one of those who had been in Cato-street; Brunt, after some conversation, suddenly exclaimed "It is not all over yet; let us go and see what they are about;" and they immediately went out together. Brunt remained absent till near eleven o'clock. For what purpose do you suppose they went out?—the object is evident; it was intended that other operations should take place in different parts of the metropolis, and finding they were defeated at the west end of the town, Brunt exclaimed, "It is not all over yet," and went to inquire into the result of the other movements. This closed the proceedings of that day, confirming, from first to last, the testimony of Adams. What further takes place? He had desired his apprentice to clean his boots early in the morning, apprehensive that they might excite attention; he rose early himself, and went into the back room—into that room with which, when Taunton came up, he said he had nothing to do. He there opened a cupboard, and took out the remains of the ammunition and other articles which were there deposited—and grenades (not hand-grenades to be used at Lord Harrowby's, for those were carried to Cato-street), fire balls, and cartridges for the artillery, made in flannel bags. These were taken out of the cupboard and put into two baskets: one of them he covered with an apron of his wife's, which had been used as a blind in that very room with which he affected to have no concern. In a few moments afterwards, Taunton the officer came up, he seized the baskets, and addressing himself to Brunt, asked what was in them: he said they were not his, he knew nothing about them; upon which he was immediately taken into custody. Upon these facts it would be idle to make any comment. They are decisive as to the guilt of the parties; and confirm in the strongest manner the testimony of Adams.

Passing from the evidence of Hale, let me direct your attention to another fact. You all remember what was stated by Adams, that the arms were brought successively to the room in Fox-court, and that they were carried from thence to a place that was called the dépôt, at Tidd's house; and that Thistlewood, the prisoner, was always anxious for their removal. You find Taunton the officer, immediately after he had searched the premises in Fox-court, proceeding to Tidd's house. He there found the arms that have been produced to you, weapons of every description, not calculated merely for an attack upon a single house in which sixteen or seventeen persons were assembled, but evidently and demonstrably intended, from the nature and size of the preparations, for some more extensive purpose. A trunk is found, containing 1,200 ball cartridges. Hand-grenades, fire-balls, cartridges for the artillery, are also discovered. But my learned friend has called a witness, for the purpose of

endeavouring to explain these circumstances,—the daughter of Tidd, who, of course, would be disposed to give the most favourable explanation for her father. But what is the amount of her evidence? She tells you that the trunk containing the ball cartridges had been carried to the apartment, three or four days before the 23rd of February. It had been decided, that the project should be carried into effect on the Wednesday; and the box, with the cartridges, was evidently sent to the *dépôt* with that view. It remained there ready for use during the whole time, and was left untouched in consequence of the failure of the plan, till the officer Taunton took it into his possession. But it is said by the witness, that some person took away a part of the arms on the 23rd, and returned them on the following morning. If this be true, it corresponds exactly with the facts of the case. When the prisoners determined to carry their enterprise into effect on the Wednesday, of course the persons engaged in it armed themselves from the magazine at Tidd's, and after the attempt had been defeated, they were then naturally carried back to the place from whence they had been taken. The evidence of this young woman then, so far from impeaching the case on the part of the prosecution, tends most directly and distinctly to confirm it. Her account coincides with the particulars stated by Adams, and proves most clearly that the story he has told is, in these particulars, correct.

I hope I am not fatiguing your patience with this detail; but when the life of a man is at stake, I am sure you will readily devote to me all that attention which may be necessary to the investigation of the truth. You will, I am persuaded, submit without reluctance to the sacrifice, from a sense of the importance of that duty which is cast upon you: I beg then to request your attention to another striking circumstance. You will recollect, that some conversation took place in the room with respect to a communication made by Hobbs, the landlord of the White-hart public-house. Adams has stated to you, that in consequence of that communication much agitation prevailed in the meeting, and that Brunt proposed a particular measure of precaution, to which I shall presently advert. I beg leave previously, however, to observe, that if the fact as to the communication made by Hobbs were untrue, Hobbs himself might have been called by the prisoner for the purpose of contradicting the testimony of Adams. There was ample time to have obtained his attendance; a whole day elapsed after Adams had been examined. Hobbs is easily accessible, and might have been called; but he does not make his appearance. Can you therefore doubt the truth of this part of the evidence of Adams; and that it is as correct as his statement of the other facts to which I have called your attention? But to return to the course of observation which I was pursuing:—In consequence of the apprehension and alarm which seemed

to prevail in the meeting, Brunt proposed, by way of security, to set a watch upon Lord Harrowby's house. This proposition originated with Brunt; it was immediately adopted, and Davidson with another person was directed to commence the watch on Tuesday evening, at six o'clock; they were to be relieved at nine by two others who were to continue at their station till twelve. The whole of this arrangement was purely accidental: observe, then, in how extraordinary a manner this part of the narrative of Adams is confirmed. We called the watchman, who said, "I observed some persons looking about the square that evening, and among them a black man, or man of colour, who attracted my particular attention." But the confirmation is still more striking. Adams has told you that he and Brunt relieved Davidson and his companion, and that they went into a public-house, at the corner of the Mews in Charles-street, where a young man challenged Brunt to play at dominos. Enquiry was made in the neighbourhood, for the purpose of ascertaining the truth of this statement, and it turned out to be perfectly correct. Gillan, the witness whom you have heard, was the person to whom Adams alluded. He recollected the person of Brunt, and confirmed, in every particular, the testimony of Adams. In every step that we take, you perceive in how remarkable a manner his evidence corresponds with the accounts given from quarters where no suspicion can by possibility attach.

Another witness, to whose evidence I beg leave to request your particular attention is Monument. He is undoubtedly, to a considerable extent, implicated in the guilt of the prisoners. It is supposed, or suggested, by my learned friend, that the assassination of his majesty's ministers was to be effected solely with a view to plunder. Was it so? Attend to the language of Thistlewood upon his first visit to Monument: "Great events," he observes, "are at hand. The people are every where anxious for a change. I have been deceived," he proceeds to say, "by many persons, but I have now got some men who will stand by me." Is it possible to misunderstand this language? What was the change that he contemplated? What are the great events to which he referred? Murdering the ministers for the purpose of plundering London! Is it possible to suppose that this could have been the design, or that any man could have entertained a thought of commencing a system of plunder, by so extraordinary and atrocious an enterprise? In what way would the murder of his majesty's ministers have facilitated this object? When he says, "great events are at hand—the people are every where anxious for a change—I have been deceived by many people, but I have now got some men who will stand by me;" what could he possibly be understood to mean, but that he was engaged in some political and revolutionary enterprise of a dangerous nature, and had got men who would stand by and co-operate with him in:

his endeavours to carry it into effect? And so it was evidently understood by Monument.

It is impossible not to call to one's recollection in this inquiry, the former station in life of the prisoner Thistlewood. He has been an officer, I believe, in his majesty's service; he has moved in the situation and rank of a gentleman; and yet you find him with his previous habits descending so low as to become the intimate companion and associate of journey-men mechanics, and of others in the humblest condition of society, associating with them daily, holding consultations with them in a small unfurnished back-room, in an obscure court, inhabited by the most obscure individuals. Is there not some extraordinary mystery in this association? Would he have stooped to this indignity, unless he had had some great object in view, which he was desirous of accomplishing, and which he could only accomplish by their means? Is not this conduct on the part of the prisoner a circumstance that must weigh greatly in your deliberations upon this case, and the nature of the enterprise in which he was engaged?

But to return to the evidence of Monument. He proceeds to Cato-street, and upon his arrival there the whole plan is developed to him. But it is suggested by the counsel for the prisoner, that as far as relates to Cato-street, there is some discrepancy between the evidence of Adams and Monument. The former stated the number in the room to be twenty; and when Monument was there Thistlewood observed, that the number was twenty-five. But how does this upon a little inquiry turn out? When Adams arrived, all the party had not assembled; Tidd and Monument, and probably some others, came in afterwards; and it is further to be observed, that the men were not actually counted, there being nothing but the mere declaration of Thistlewood that they amounted to twenty-five. These then are the supposed contradictions, which, for want of better matter, are relied upon for the purpose of endeavouring to persuade you that the evidence of Adams, or Monument, or of both of them, is not worthy of credit.

Some other differences of a trivial nature have also been insisted upon, between the account given by Adams and the statement of the officers, as to what passed after the latter had arrived at the stable. But can you suppose for a moment, from this circumstance, that Adams was not present at that meeting? Who does not know, that in a scene of confusion of this description, when the mind is agitated, and every thing is in a state of disorder and tumult, the account given by those who are present; and eye-witnesses of the facts, will always be at variance in some particulars from each other? One man recollects one circumstance, and another person will observe and recollect another; and it is a common observation in courts of justice,—and I refer to it, because observations would not be re-

peated until they become trite and hacknied, unless they were founded in truth,—that when two men describe the same transaction, if they describe it precisely in the same way, it leads to a suspicion of their veracity, and of previous arrangement and concert; for it is inconsistent with the nature of the human mind, that they should, in a confused and complicated transaction, agree in all the minute particulars of their story. And I therefore repeat, that not the slightest inference can be raised in favour of the prisoner from any supposed difference between the statement of the officers and that of Adams, as to what took place at the moment of ascending the ladder. Ruthven, the first who mounted the ladder, did not hear any person call out from below; Adams, on the contrary, said, somebody called out, "Look above there," as the officers approached; Ruthven did not remember this, nor Ellis—therefore my learned friend says, there is some contradiction, and you ought not to believe that Adams was present. But you will recollect, that Westcoatt said he heard these expressions used; and I mention this circumstance to confirm my position, and to show, that honest men, acting with the best possible intentions, when giving an account of the same transaction, will often, in many particulars, differ from each other. Ruthven tells you that he called out, "Seize their arms, we are officers!" now whether he said any thing about a warrant or not, I will not take upon myself to assert; but another officer says, the word warrant was used. Really, when such circumstances are relied on by my learned friend, you must, out of respect to his judgment and talents, feel that he is under the necessity of resorting to them, and of catching even at straws, because he has nothing more substantial upon which to rest his defence.

I beg leave now to advert to a witness of considerable importance in this case, I mean Dwyer. Some attempt has been made to impeach his credit. Dwyer told you, he had lived thirteen years with the same master, Mr. Smith. That account is not contradicted. A person of whom you knew nothing, of whose credit you have no means of judging, comes here for the purpose of telling you, that the conduct of Dwyer, upon some former occasion, about two months ago, was infamous; and that therefore he would not believe him upon his oath. Dwyer denies the fact alleged against him. Who is this witness that presents himself before you? A labouring mechanic: we know nothing further of him. Can any reason be assigned, why you should place more reliance upon his testimony than on Dwyer himself, who has lived and worked for thirteen years with the same master. But observe the conduct of this witness, who comes to impeach the credit of another. He tells you that a base and infamous proposition was made to him by Dwyer, and he acceded to it. It is true, that according to his own statement he afterwards withdrew, but he still continued

to keep company and associate with Dwyer. Such is the account which the witness gives of his own character and conduct. Would an honest man, entitled to credit in a court of justice, have acted as he describes himself to have acted upon this occasion? and when a man thus stigmatizes himself, what reliance can you place on his testimony, when he is called for the purpose of blackening the character of another? He tells you further, that he made no charge before a magistrate, but continued to associate with this individual as before. But there is another important fact, which speaks for itself, and cannot deceive you, and which is directly at variance with the account given by this witness. He says, Dwyer was very flush of money; he was throwing about his notes; and that circumstance led to the proposition to which I have adverted. So far from this being the case, you remember that Dwyer is a married man, with a family of three children, and was obliged to apply for assistance to the parish of Mary-le-bone, and that they put him to work at the mill where they employ persons in that situation. This was at the very period when the witness says he was so flush of money, about two months ago. Such is the nature and the value of the attack that has been made upon the testimony of Dwyer.

Now let us consider what is the story which Dwyer relates, who must, I am persuaded, notwithstanding the attempt made by the other side, stand in your judgment as an unimpeachable witness. He tells you Davidson came to him, and said "that he had some proposition to communicate; that it must be communicated on the Tuesday evening, but that he could not call, because he was going to stand sentry." What a remarkable circumstance is this, coming out too by mere accident. Where was Davidson going? He was going to watch at lord Harrowby's on the Tuesday, of which Dwyer could have had no knowledge. But to pursue the account given by Dwyer; he says that Harrison in consequence of this interview called upon him, and on the Wednesday morning for the first time introduced him to Fox-court. While he was there some of the other parties came in, Thistlewood among the rest, and the particulars of this scheme were unfolded to him. He was requested to join in the enterprise. He was supposed to possess considerable influence over many of his countrymen living in Gee's-court and the neighbourhood of that place. They endeavoured, therefore, to press him into their service; they stood in need of assistance, and seemed to have thought that at this late hour, when the scheme was ripe for execution, there was not much risk in making such a communication. At all events, when men are embarked in desperate designs of this nature, something must be put to hazard, something must be trusted to their agents and instruments; they must put themselves in some degree in the power of others, and rely upon their generosity or fidelity: and

this is generally done in the last stage of preparation, from a hope that before any thing can escape or be revealed, the object itself may be accomplished. The outline of the plan, therefore, precisely as stated by Adams in his evidence, was communicated to Dwyer. He tells you, that the ministers were to be assassinated by one party, another party was to set fire to the metropolis at various points, and a third body was to take possession of the artillery. These particulars were stated to him by Harrison and the other persons assembled in Fox-court. Mark the other circumstances of the case. Does not the preparation accord with this? Do not the materials that were at that interview exhibited to him, support the rest of the statement? For what purpose were the fire-balls prepared? For what purpose were the hand-grenades provided? But above all, for what purpose were the flannel bags of gunpowder to be used? evidently for the artillery, for which they were intended as cartridges. We have heard much from the counsel for the prisoner about the wildness and extravagance of this scheme; and I do think it was most wild, extravagant, and visionary. But assume only one fact, one opinion that prevailed in the mind of the prisoner, and it ceases at once to have that character. The prisoner had conceived that the great mass of the people of this country, and particularly of the metropolis, were disaffected to the government; that they were tired of the constitution, and of that system of laws under which the nation had so long flourished; that the people, to use his own language, were every where anxious for a change; and that they would be ready at once to join in overturning the constitution, and establishing a new scheme of government. He hoped, therefore, that by striking a great and stunning blow, in the assassination of the ministers of the Crown, by causing fires to be lighted in different parts of the metropolis, and creating that confusion and terror which would necessarily result from these extraordinary events, every tie would be loosened, obedience and order would cease, the spirit of hatred and disaffection to the government would every where display itself, and that the whole physical force of the metropolis might be brought into action, and employed to subvert the laws and constitution of the empire. This was the nature and character of the design; not so wild and visionary as my learned friend supposes, if the prisoner was correct in the estimate which he had formed of the opinions and feelings of the great bulk of the people. But in this I trust and know that he was mistaken; for whatever discontent and dissatisfaction may prevail from temporary and accidental causes, whatever may be the violence of party feelings and party animosity, I never can believe that the people of this country are not sincerely and warmly attached to the constitution of their forefathers, and to that admirable and equal system of laws, by which their property, their lives, and liberties are so vigilantly protected.

Had an explosion taken place, and many persons, which is by no means impossible, joined in it, destruction and devastation to a great extent might certainly have been produced; but I never can believe that it would have been attended with any real danger to this constitution and empire. But such was not the opinion that prevailed in the mind of the prisoner; far other were his notions; he considered that the great mass of the people was tainted with revolutionary principles, and that if the functions of government could but for a moment be suspended, the whole of their power would be brought into action, and the destruction of the present system would be accomplished. I do not, therefore, feel the weight of that part of my learned friend's argument, in which he would lead you to believe, that the plan could not have been entertained by the prisoner, because it was wild and visionary: this would be to belie all history, and to betray a deplorable ignorance of the human character, and of the heart and mind of man. My learned friend has himself recalled to your recollection an instance, not of a person comparatively in a humble station of life, but of an individual of high rank, of great fortune, of considerable talent and experience in the affairs of the world, the earl of Essex, engaging in a scheme much more extravagant, much more visionary and frantic, than that imputed to the prisoner at the bar; and for which his life was sacrificed to the violated laws of his country. Nay, looking around at what is now passing before us in other parts of this empire, I would ask, whether the schemes entertained and pursued by those to whom I am alluding, are not to the full as wild and visionary as those ascribed to the prisoner and his associates. And within our own time I remember an unhappy person standing in the same situation as the prisoner at the bar, an officer of high rank in his majesty's service, of great and distinguished bravery, of acknowledged talent and experience,—I allude to colonel Despard*—charged with a treasonable conspiracy, which, in its object and the means by which it was to be accomplished, was infinitely more wild, extravagant, and frantic, than the atrocious scheme which you are now considering: and yet no doubt has ever been entertained by any reasonable man of the truth of that plot, or of the propriety and justice of the verdict pronounced against him. And, therefore, without contrasting the absurdity of my learned friend's supposition, that this was a scheme of assassination merely with a view to plunder,—without contrasting this supposition with the revolutionary project spoken to by the witnesses, and which is supposed to be so wild and irrational,—but taking the question plainly and simply, the extravagance of the project affords no reasonable argument against the guilt of the prisoner. The only question will be, has the fact been proved? is the case established in

evidence? does the proof satisfy your minds, not whether the project itself was absurd and senseless, not whether it was such a scheme as reasonable men would have entertained, but whether it was in reality formed?

I have been insensibly led from the observations I was making on the testimony of Dwyer. Immediately after the communication was made to him, he left the house; this was about one o'clock. He tells you he was glad to get away; while he was deliberating with himself what course he should pursue, he accidentally met major James, and told him all that had passed. Major James sent him to the Secretary of State. In all this he might have been contradicted, if what he has stated was untrue; for major James was present, and might have been called on the part of the prisoner. What is there then to lead you to doubt the evidence of Dwyer? to lead you to believe that he is a man capable of coming into court and, disregarding the sacred obligation of his oath, and every other feeling that sways the heart of man, to invent and fabricate a story, which is to consign to an ignominious death, the prisoner at the bar and his associates. Before you can come to this conclusion, you must, without evidence, believe him the most base, infamous, and merciless of mankind.

Then, when my learned friend says, this case rests so entirely on the testimony of Adams, that if you get rid of that, you have nothing else upon which to come to the conclusion of guilt against the prisoner, he has either forgotten, or intentionally passed over, the testimony of Dwyer, and which confirms in the strongest manner the leading particulars of the plan, as communicated by Adams.

It is further objected, that none of these witnesses were together, they were never present at the same time. I thank my learned friend for the observation:—if they were not present at the same time, if they had no connexion with each other;—if Adams and Dwyer were present at different periods, when different communications were made;—the correspondence between their evidence is more remarkable, and the more convincing. It shews there is no concert between them. They tell that of which they were themselves witnesses; and what passed at one period was in exact unison and correspondence with what took place at another.

There is another witness, a person of the name of Hiden, whom my learned friends on the other side have not attempted in the slightest degree to impeach, either by evidence or by cross-examination, and whose conduct has throughout been perfectly correct. The same communication was made to Hiden which was afterwards made to Dwyer. The precise day of the communication he did not recollect. He was struck with horror at the proposal, and communicated it to lord Harrowby. So anxious was he to give the information, that he intercepted lord Harrowby as he was coming

out of the Park, and delivered to him a letter addressed to Lord Castlereagh, containing the intelligence which he had received. My learned friend was desirous to throw this back to a distant period. The witness did not recollect the precise day, whether it was one, or two, or three days, before the intended meeting; he had not taken pains to prepare his evidence for the occasion. Lord Harrowby is called; he tells you it was on the Tuesday, about two o'clock, some hours after the affair had been decided upon in Fox-court, in consequence of the production of the newspaper.

Now that I have mentioned the newspaper, I must observe, that my learned friend supposed this account of the intended dinner to be all a fabrication; that Edwards was the author and inventor of it, for the purpose of involving the prisoner and his associates in the guilt of high treason. I am sure every thing that rests merely upon assertion, every thing that is not proved in the cause, all that is surmised about spies, and other topics of a similar nature, resting upon no proof, will be rejected from your consideration; but was it, as my learned friend has hinted, an ideal dinner? The cards had been sent out on the Friday, or Saturday, and it was announced in the usual way in one of the ministerial papers. But some doubt was entertained upon this point; a gentleman was called, representing himself to be the court reporter; he said, the communication did not proceed from him; but a person from the New Times office, in which paper the article appeared, produced the manuscript, which contained several other announcements of a similar nature, and they were all proved to be in the hand-writing of another court reporter of the name of Lavenu. Such are the extraordinary surmises and suspicions, which have been introduced into this case. It was supposed, that no dinner was intended; that the whole was a fiction; that some person behind the scenes, who possessed great influence over the prisoner, and could move him like a puppet, had for his own purposes inserted this article in the paper; but when the affair comes to be investigated, the cloud is at once dispelled. The fact is, that a proper and decent interval having elapsed since the funeral of the king, the cabinet dinners were resumed, the cards were issued, and on the Tuesday it appeared in the usual form in the newspaper.

But to return to the evidence of Hiden. He says that Wilson, one of the prisoners, communicated to him all the particulars of the plot, and his statement corresponds precisely with the account given by Adams, by Dwyer, and by Monument; that four parties were to be formed; that the town was to be set on fire in various places; that attacks were to be made in different quarters; and that for that purpose, the cannon were to be seized, and all this was to be consequent on the attack at Lord Harrowby's. Wilson further stated, that Gee's-court where Dwyer lived were all in it,

for Dwyer had given them reason to suppose he would embark in the transaction. He tells you that he felt it necessary to do so, for his own personal security. This is at once a confirmation of the truth of the statements both of Dwyer and Hiden. They have had no communication together; Dwyer had given the prisoners reason to suppose they would be joined by the people at Gee's-court; and Wilson communicated that circumstance to Hiden, which confirms, in a remarkable manner, the evidence of Dwyer.

Now, gentlemen, I will ask you with confidence, what becomes of the observation that this case rests entirely on the testimony of Adams? Am I not justified in saying, that if Adams were the most infamous of witnesses, and you were even to blot his evidence from your notes, there is abundantly sufficient to bring home the case to the prisoner at the bar?

Passing from this evidence, let us come to the events of Cato-street,—to facts which cannot be contradicted or disputed, which speak for themselves, and speak so strongly, that my learned friends have been compelled to admit that there was at least an intention to assassinate his majesty's ministers. But, I conceive that if you shall be of opinion that such an intention was entertained,—an intention to assassinate not merely this or that individual in the government, but by one great and sweeping blow to destroy the whole cabinet,—this will go a great way indeed to satisfy you, that there were further objects in contemplation; because I cannot suppose that from any motives of enmity or revenge directed against individuals of whom the prisoners could have no personal knowledge, they would have embarked in a design so dangerous and so wicked. If they formed the design of murdering the ministers of the Crown, it is impossible to suppose that this was intended to be effected with any other than an insurrectionary view. I think, therefore, that in this concession extorted from my learned friends by the force of the evidence, they have abandoned the case of the prisoner; for, with all their ingenuity, they could not even shape a plausible case in support of their supposition that such a blow could have been intended with any other view than to form the basis of an insurrection, in which it was hoped and expected that the great body of the people would instantly join. As to the trifling means of the parties, that consideration, in the view I have taken of the case, is no objection against the reality of the design. All that they conceived to be necessary for the attainment of their object was to strike one great blow,—to exhibit an appearance of force; and they confidently expected this would be followed by a general revolt they might lead and conduct at their pleasure.

Without entering into details of what took place in Cato-street, I beg leave to direct your attention for a moment to the nature of the preparations. If the conspiracy was merely

with a view to plunder, why prepare materials for loading cannon?—why prepare so large a quantity of ammunition? My learned friend has attempted some explanation of the motives of that part of the design which related to the setting fire to the metropolis. If he thought such explanation necessary, and endeavoured to show how it agreed with the supposed design of plunder, it was equally incumbent on him to give a similar explanation as to the other circumstances of preparation made by the prisoners: but he has not attempted to do this. And, in truth, the materials collected were inconsistent with any other view of the case than that which I have stated; and they confirm beyond the possibility of doubt the story told by Adams, Monument, and Hiden; the latter of whom was so anxious immediately to give information, for the purpose of counteracting this most infamous plot.

But it is objected that we have not called other witnesses who might have been produced—that there is a person of the name of Edwards whom we have not examined. The fact is, we have called two persons who were engaged in the conspiracy with the prisoners; and if we had called others, it would only have had the effect of leading to a still more copious torrent of invective from the other side. We have called two witnesses, and we have confirmed their testimony beyond the possibility of dispute. But when my learned friends say we have not called certain other persons to support the case of the prosecution, how much more strongly does the observation apply against the prisoner who has witnesses in his power to produce, his own friends and associates—Potter, Palin, Harris, and Hall, and others who were present on the same occasion, who have been mentioned, and who might have been called to show that the account given by the witnesses for the Crown is false and fabricated; and yet not one of them has appeared to contradict the statement made on the part of the prosecution.

But this plot, it is contended, had no political object in view. Observe the language and conduct of the prisoner. The numbers at Cato-street were not so many as he expected;—they amounted only to twenty-five. He was alarmed;—he was apprehensive they might desert him. He endeavoured to inspire them with confidence. He warned them of the danger of retreating.—It would prove, he said, another Despard's job. Why that allusion, but because his enterprise was of a similar character?—Can it be explained on any other principle? Does it not show what was passing in his mind at the time, and evince the true nature of the enterprise more satisfactorily than evidence of any other description? But to pursue this still further:—Davidson is apprehended, and immediately exclaims, "let those be damned who will not die in liberty's cause;" and he sings a line of the admirable ballad of the poet Burns, 'Scots wha' ha' with Wallace bled.' Does not this speak for itself,

in terms too distinct to be misunderstood? Does it not unfold his heart and mind to our observation, and show what was passing there at the time; what was the object of the criminal enterprise in which he had embarked; what it was for which he was then a prisoner?—Assassination to be followed by plunder?—No, but assassination to be followed by revolution, and the establishment of that which he miscalled liberty. And here it is impossible not to deplore the self-delusion of these misguided men who, engaged in an atrocious design against the laws and constitution of their country, and which was to commence by the sacrifice of some of the best blood of the nation, by the murder, among others, of that distinguished individual who had led our armies to victory, and exalted among the nations of the earth the name and character of Englishmen, could suppose that they were treading in the steps of the great Scottish chieftain, who, with the spirit and the energies of a real patriot, laboured to free his country from a foreign yoke; and with inadequate means and resources, but animated by an unconquerable spirit, kept at bay the power of England, performing deeds of the most heroic valour, till he fell at last a victim to the basest and most degrading treachery.

I have gone through this cause. I feel myself exhausted, and I am afraid I have worn out your patience. My omissions will be supplied by my lord. Let no suggestions made by my learned friend operate on your minds, except so far as those suggestions arise out of, and are supported by the evidence. It is easy to scatter insinuations, and to impute blame; but you, I am sure, will not consider accusation, still less dark and indistinct surmises, as proof. You are told that the prisoner is contending with the power of the Crown, but he is contending before a British jury, who, if they were to incline to either side, it would be in favour of the accused: and I am sure, knowing as I do those who are associated with me upon this occasion, there is no wish or disposition, on the part of the prosecution, to press against the prisoner any point beyond what justice requires. We have no other duty, and can have no other desire than to lay the case fairly before you. It will be for you, then, receiving the law from his lordship, who is bound by the same obligation as yourselves, to say whether, upon the evidence which has been laid before you, you are satisfied that the prisoner is guilty of the crime with which he is charged. Every assistance which extensive talent and long experience, and knowledge of the law could afford to a person in his situation, he has received. Nothing has been wanting to his defence.

Before I conclude, I beg leave to repeat what has been said by my learned friend, the counsel for the prisoner, that if you entertain a reasonable doubt on the subject of his guilt, it will be your duty to acquit him: but, on the other hand, as the guardians of the public

peace, acting under the sacred obligation of the oath which you have taken, if you are satisfied that the case is proved against him, you will discharge your duty, without looking to the consequences, with that firmness, impartiality, and integrity which have ever been the distinguishing characteristics of an English jury.

SUMMING-UP.

Lord Chief Justice Abbott.—Gentlemen of the Jury;—This is an indictment against Arthur Thistlewood, the prisoner now at the bar, and several other persons, who, in the progress of this trial, have also appeared at the bar in order that they might be identified by some of the witnesses, charging them with the crime of high treason. That crime has been truly stated to you to be the greatest known to the law: it is so, because it comprises not only individual and private evil as most others, but a great and extensive public evil also. A charge so serious, requires at the hands of an English jury, and will, I am sure, from what I have already seen, receive from you the most grave and mature consideration.

The charge upon the record is divided into several heads:—the first is, that of compassing and imagining to depose the king—the second, that of compassing and imagining to put the king to death—the third, that of compassing and imagining to levy war against the king, in order to compel him to change his measures and councils—and the fourth, that of actually levying war against the king. Two of these charges, namely, the compassing and imagining the death of his majesty, and the actually levying war against him, were declared to be treasons by a statute passed as long ago as the reign of king Edward the third. In the construction of that ancient statute it had been held, not only in many cases passing in judgment in our Courts, but also by the opinion delivered to us by grave and learned writers upon the law on that subject, that all conspiracies and attempts to depose his majesty, and all conspiracies and attempts to levy war against him, were overt acts of a treasonable intention to take away his life, because, as experience shews us, the death of the sovereign generally follows his deposition. In order, however, to remove any mistake that persons might fall into, a statute was passed in the reign of his late majesty, similar in substance, and nearly so in language, to several statutes which had been formerly passed, but which operated for a season only, by which the compassing or imagining to depose his majesty, or the compassing and imagining to levy war against him, or to compel him to change his measures and councils, were each declared to be a substantive treason. And as the evidence in this case points more directly to the compassing to depose and to levy war against him, than to the actual intention to take away his life, the most simple way of presenting this case to you, is, to direct your minds to those parts of this in-

dictment, which charge the compassing and imagining to depose the king, and to levy war against the king in order to compel him to change his measures and councils.

You will observe, that the substance of the charge is made to consist in the intention—in the compassing, imagining, and intending, and not in the actual deposition of his majesty, or in the actual levying war;—such intention, however, must be manifested and followed up by certain acts of the parties, which acts must be (as they are in this case) stated on the record, and proved to the satisfaction of the jury, as evidencing the traitorous intention.

Now the acts charged on the indictment are, as applied to each count, the same;—they are first, the meeting, conspiring, and consulting amongst themselves to destroy the government of this realm as by law established—meetings and consultations to levy war against the king, to subvert the constitution and government as by law established—meeting and conspiring to assassinate and murder divers of the privy council of the king—maliciously and traitorously providing large quantities of arms and weapons, in order to arm themselves and others, for the purpose of raising and levying war against the king—meeting and conspiring to seize divers cannon, warlike weapons, arms, and ammunition, in order to arm themselves and others, for the purpose of raising and levying war against the king—meeting and conspiring to burn and destroy divers houses and buildings in and near London, and divers barracks used for the reception and residence of the soldiers, troops, and forces of the king, and to prepare combustibles for the purpose of burning and destroying the said houses, buildings, and barracks—and further, the actual assembling in arms with intent to assassinate, kill, and murder divers of the privy council of the king employed in the administration of the affairs and government of this kingdom, and to levy war against the king.

These, gentlemen, are the facts charged in the indictment as (in technical language) the overt acts, that is, as the evidence of the intention, and the steps and measures adopted in order to carry that intention into effect; to these acts therefore the evidence that has been laid before you has been directed, and if these acts are proved to your satisfaction, or any important part of them, it will then be for you to consider, whether the criminal and traitorous intention charged—to depose the king, or to levy war against him—is satisfactorily proved, and if so, as each is treason, it is not material to distinguish between them.

You have heard in this evidence, of a very extraordinary (I may say for the present) project, alleged to have been entertained by this person now at the bar, and others associating with him; a project, as it is said, to take away the lives of all the persons most confidentially employed in the administration of the government of this realm by his majesty, when they should be assembled at a dinner, and

that some of the conspirators were to proceed at the same time, and others immediately afterwards, to set on fire buildings in various parts of the town, to seize some pieces of artillery, to take possession of the Mansion-house, and to declare that a new government was established; thereby to overthrow the existing government and the subsisting order of things, and to substitute something else in its place. This is the general nature of the project imputed to the prisoner at the bar; it is important for you to consider whether that project is to your satisfaction proved. The question is, not whether it was likely to be successful, but whether it was intended by these persons, and whether steps were taken to carry it into effect. The improbability of the success of such a scheme is fit matter for your consideration in weighing the evidence that is laid before you, in order to prove that the scheme did exist; but your inquiry is, did that scheme exist or did it not? and is it proved to your satisfaction by the evidence that has been laid before you.

A very large body of evidence has been laid before you, in order to prove, that such a project, however wild and visionary, was in fact contrived, and that steps were taken by the prisoner and others to carry it into effect. Some witnesses have given you minute details of various conversations taking place at various times; and in weighing the effect of that testimony, it seems to me that you will do well to consider, rather the general substance and import, than the precise accuracy of every particular expression that may have fallen from any one witness: a long detail will hardly ever be free from some occasional error or mistake; the question properly, is not whether there be any trifling error or mistake, but whether the substance and body of the testimony laid before you be or be not in your judgment true.

Some of the persons who have been called before you to give evidence upon this occasion are truly represented to be persons who acknowledge themselves to be accomplices in this most traitorous design — that observation, however, does not apply to all who have given evidence; and much observation has been made upon the credit that ought to be given to persons in that situation. Upon that subject I will only say, that by the law of this, and I believe of every other country, accomplices are witnesses competent to be heard: the credit that is to be given to them, is matter, in this country, for the consideration of gentlemen in your situation; and that credit must depend, in a great degree, on the probability of the story they tell, or on the confirmation that may be given to them from other and pure sources, so far as what they say is capable of confirmation, and upon the absence of that contradiction which may be adduced if the story related be not true.—There is no rule of law which says that the testimony of accomplices must be credited;—there is no rule of law, or of practice, that has said it must be

rejected:—to say it must be, would offer the greatest possible latitude to crimes; because, as was truly observed by one of the learned counsel for the prosecution, if bad men once are given to understand they are in no danger of being brought to justice from disclosures made by those who participate in their crime, they will trust to this and proceed in their wicked designs; whereas we know bad men entertain great distrust of each other, which often prevents the perpetration of those offences which cannot be committed without the concurrence of several persons.

Having made these general observations in order to direct your attention, in the best way that I am able, to the evidence that has been laid before you, I will now, as it is some hours since the evidence was distinctly heard by you, proceed to read a great part, if not the whole evidence; so much as occurs to me as necessary to submit to your consideration, and more if you desire it.

The first witness called was Robert Adams, on whom so much remark has been made by the learned counsel on one side and the other. According to his account, he must be considered as an accomplice in the treasonable conspiracy, if any treasonable conspiracy existed, because he acknowledges that he attended many meetings, and was one of those who were assembled to carry it into effect. The account he gives of himself is, that he is a shoemaker; that he formerly belonged to the royal regiment of Horse Guards; that he has left that service eighteen years; that he first became acquainted with Brunt, one of the persons indicted, about the year 1816, at Cambray, in France; that his first introduction to the prisoner Thistlewood, was on the 13th of January, at his own lodgings in Stanhope-street, Clare-market. He says, "I was introduced by Brunt, who, in going into the room, said to Thistlewood, this is the man I was speaking to you about; Thistlewood said, 'You were once in the Life-guards,' I said no, I had belonged to the Blues; he said, 'I suppose you are a good soldier,' I replied that I could use a sword to defend myself, but I was not so clever as I had been, not having been in the habit of using arms for some time." Then he says that Mr. Thistlewood began to allude to the genteel people of the country, endeavouring to make them appear mean and contemptible; saying, that there was not one of them who was worth so small a sum as ten pounds, that was worth any thing for the good of his country: as to the shopkeepers of London, he said they were a set of aristocrats, and were all working under one system of government; that he should glory to see the day that all the shops were shut up and plundered; that Mr. Hunt was a damned coward and no friend to the people, and he had no doubt acted as a spy for government; that Mr. Cobbett, with all his writings, was of no good to the country, and he had no doubt that he too was a spy as well as Mr. Hunt. He

to keep company and associate with Dwyer. Such is the account which the witness gives of his own character and conduct. Would an honest man, entitled to credit in a court of justice, have acted as he describes himself to have acted upon this occasion? and when a man thus stigmatizes himself, what reliance can you place on his testimony, when he is called for the purpose of blackening the character of another? He tells you further, that he made no charge before a magistrate, but continued to associate with this individual as before. But there is another important fact, which speaks for itself, and cannot deceive you, and which is directly at variance with the account given by this witness. He says, Dwyer was very flush of money; he was throwing about his notes; and that circumstance led to the proposition to which I have adverted. So far from this being the case, you remember that Dwyer is a married man, with a family of three children, and was obliged to apply for assistance to the parish of Mary-le-bone, and that they put him to work at the mill where they employ persons in that situation. This was at the very period when the witness says he was so flush of money, about two months ago. Such is the nature and the value of the attack that has been made upon the testimony of Dwyer.

Now let us consider what is the story which Dwyer relates, who must, I am persuaded, notwithstanding the attempt made by the other side, stand in your judgment as an unimpeachable witness. He tells you Davidson came to him, and said "that he had some proposition to communicate; that it must be communicated on the Tuesday evening, but that he could not call, because he was going to stand sentry." What a remarkable circumstance is this, coming out too by mere accident. Where was Davidson going? He was going to watch at lord Harrowby's on the Tuesday, of which Dwyer could have had no knowledge. But to pursue the account given by Dwyer; he says that Harrison in consequence of this interview called upon him, and on the Wednesday morning for the first time introduced him to Fox-court. While he was there some of the other parties came in, Thistlewood among the rest, and the particulars of this scheme were unfolded to him. He was requested to join in the enterprise. He was supposed to possess considerable influence over many of his countrymen living in Gee's-court and the neighbourhood of that place. They endeavoured, therefore, to press him into their service; they stood in need of assistance, and seemed to have thought that at this late hour, when the scheme was ripe for execution, there was not much risk in making such a communication. At all events, when men are embarked in desperate designs of this nature, something must be put to hazard, something must be trusted to their agents and instruments; they must put themselves in some degree in the power of others, and rely upon their generosity or fidelity: and

this is generally done in the last stage of preparation, from a hope that before any thing can escape or be revealed, the object itself may be accomplished. The outline of the plan, therefore, precisely as stated by Adams in his evidence, was communicated to Dwyer. He tells you, that the ministers were to be assassinated by one party, another party was to set fire to the metropolis at various points, and a third body was to take possession of the artillery. These particulars were stated to him by Harrison and the other persons assembled in Fox-court. Mark the other circumstances of the case. Does not the preparation accord with this? Do not the materials that were at that interview exhibited to him, support the rest of the statement? For what purpose were the fire-balls prepared? For what purpose were the hand-grenades provided? But above all, for what purpose were the flannel bags of gun-powder to be used? evidently for the artillery, for which they were intended as cartridges. We have heard much from the counsel for the prisoner about the wildness and extravagance of this scheme; and I do think it was most wild, extravagant, and visionary. But assume only one fact, one opinion that prevailed in the mind of the prisoner, and it ceases at once to have that character. The prisoner had conceived that the great mass of the people of this country, and particularly of the metropolis, were disaffected to the government; that they were tired of the constitution, and of that system of laws under which the nation had so long flourished; that the people, to use his own language, were every where anxious for a change; and that they would be ready at once to join in overturning the constitution, and establishing a new scheme of government. He hoped, therefore, that by striking a great and stunning blow, in the assassination of the ministers of the Crown, by causing fires to be lighted in different parts of the metropolis, and creating that confusion and terror which would necessarily result from these extraordinary events, every tie would be loosened, obedience and order would cease, the spirit of hatred and disaffection to the government would every where display itself, and that the whole physical force of the metropolis might be brought into action, and employed to subvert the laws and constitution of the empire. This was the nature and character of the design; not so wild and visionary as my learned friend supposes, if the prisoner was correct in the estimate which he had formed of the opinions and feelings of the great bulk of the people. But in this I trust and know that he was mistaken; for whatever discontent and dissatisfaction may prevail from temporary and accidental causes, whatever may be the violence of party feelings and party animosity, I never can believe that the people of this country are not sincerely and warmly attached to the constitution of their forefathers, and to that admirable and equal system of laws, by which their property, their lives, and liberties are so vigilantly protected.

Had an explosion taken place, and many persons, which is by no means impossible, joined in it, destruction and devastation to a great extent might certainly have been produced; but I never can believe that it would have been attended with any real danger to this constitution and empire. But such was not the opinion that prevailed in the mind of the prisoner; far other were his notions; he considered that the great mass of the people was tainted with revolutionary principles, and that if the functions of government could but for a moment be suspended, the whole of their power would be brought into action, and the destruction of the present system would be accomplished. I do not, therefore, feel the weight of that part of my learned friend's argument, in which he would lead you to believe, that the plan could not have been entertained by the prisoner, because it was wild and visionary: this would be to belie all history, and to betray a deplorable ignorance of the human character, and of the heart and mind of man. My learned friend has himself recalled to your recollection an instance, not of a person comparatively in a humble station of life, but of an individual of high rank, of great fortune, of considerable talent and experience in the affairs of the world, the earl of Essex, engaging in a scheme much more extravagant, much more visionary and frantic, than that imputed to the prisoner at the bar; and for which his life was sacrificed to the violated laws of his country. Nay, looking around at what is now passing before us in other parts of this empire, I would ask, whether the schemes entertained and pursued by those to whom I am alluding, are not to the full as wild and visionary as those ascribed to the prisoner and his associates. And within our own time I remember an unhappy person standing in the same situation as the prisoner at the bar, an officer of high rank in his majesty's service, of great and distinguished bravery, of acknowledged talent and experience,—I allude to colonel Despard*—charged with a treasonable conspiracy, which, in its object and the means by which it was to be accomplished, was infinitely more wild, extravagant, and frantic, than the atrocious scheme which you are now considering: and yet no doubt has ever been entertained by any reasonable man of the truth of that plot, or of the propriety and justice of the verdict pronounced against him. And, therefore, without contrasting the absurdity of my learned friend's supposition, that this was a scheme of assassination merely with a view to plunder,—without contrasting this supposition with the revolutionary project spoken to by the witnesses, and which is supposed to be so wild and irrational,—but taking the question plainly and simply, the extravagance of the project affords no reasonable argument against the guilt of the prisoner. The only question will be, has the fact been proved? is the case established in

evidence? does the proof satisfy your minds, not whether the project itself was absurd and senseless, not whether it was such a scheme as reasonable men would have entertained, but whether it was in reality formed?

I have been insensibly led from the observations I was making on the testimony of Dwyer. Immediately after the communication was made to him, he left the house; this was about one o'clock. He tells you he was glad to get away; while he was deliberating with himself what course he should pursue, he accidentally met major James, and told him all that had passed. Major James sent him to the Secretary of State. In all this he might have been contradicted, if what he has stated was untrue; for major James was present, and might have been called on the part of the prisoner. What is there then to lead you to doubt the evidence of Dwyer? to lead you to believe that he is a man capable of coming into court and, disregarding the sacred obligation of his oath, and every other feeling that sways the heart of man, to invent and fabricate a story, which is to consign to an ignominious death, the prisoner at the bar and his associates. Before you can come to this conclusion, you must, without evidence, believe him the most base, infamous, and merciless of mankind.

Then, when my learned friend says, this case rests so entirely on the testimony of Adams, that if you get rid of that, you have nothing else upon which to come to the conclusion of guilt against the prisoner, he has either forgotten, or intentionally passed over, the testimony of Dwyer, and which confirms in the strongest manner the leading particulars of the plan, as communicated by Adams.

It is further objected, that none of these witnesses were together, they were never present at the same time. I thank my learned friend for the observation:—if they were not present at the same time, if they had no connexion with each other;—if Adams and Dwyer were present at different periods, when different communications were made;—the correspondence between their evidence is more remarkable, and the more convincing. It shews there is no concert between them. They tell that of which they were themselves witnesses; and what passed at one period was in exact unison and correspondence with what took place at another.

There is another witness, a person of the name of Hiden, whom my learned friends on the other side have not attempted in the slightest degree to impeach, either by evidence or by cross-examination, and whose conduct has throughout been perfectly correct. The same communication was made to Hiden which was afterwards made to Dwyer. The precise day of the communication he did not recollect. He was struck with horror at the proposal, and communicated it to lord Harrowby. So anxious was he to give the information, that he intercepted lord Harrowby as he was coming

out of the Park, and delivered to him a letter addressed to Lord Castlereagh, containing the intelligence which he had received. My learned friend was desirous to throw this back to a distant period. The witness did not recollect the precise day, whether it was one, or two, or three days, before the intended meeting; he had not taken pains to prepare his evidence for the occasion. Lord Harrowby is called; he tells you it was on the Tuesday, about two o'clock, some hours after the affair had been decided upon in Fox-court, in consequence of the production of the newspaper.

Now that I have mentioned the newspaper, I must observe, that my learned friend supposed this account of the intended dinner to be all a fabrication; that Edwards was the author and inventor of it, for the purpose of involving the prisoner and his associates in the guilt of high treason. I am sure every thing that rests merely upon assertion, every thing that is not proved in the cause, all that is surmised about spies, and other topics of a similar nature, resting upon no proof, will be rejected from your consideration; but was it, as my learned friend has hinted, an ideal dinner? The cards had been sent out on the Friday, or Saturday, and it was announced in the usual way in one of the ministerial papers. But some doubt was entertained upon this point; a gentleman was called, representing himself to be the court reporter; he said, the communication did not proceed from him; but a person from the New Times office, in which paper the article appeared, produced the manuscript, which contained several other announcements of a similar nature, and they were all proved to be in the hand-writing of another court reporter of the name of Lavenu. Such are the extraordinary surmises and suspicions, which have been introduced into this case. It was supposed, that no dinner was intended; that the whole was a fiction; that some person behind the scenes, who possessed great influence over the prisoner, and could move him like a puppet, had for his own purposes inserted this article in the paper; but when the affair comes to be investigated, the cloud is at once dispelled. The fact is, that a proper and decent interval having elapsed since the funeral of the king, the cabinet dinners were resumed, the cards were issued, and on the Tuesday it appeared in the usual form in the newspaper.

But to return to the evidence of Hiden. He says that Wilson, one of the prisoners, communicated to him all the particulars of the plot, and his statement corresponds precisely with the account given by Adams, by Dwyer, and by Monument; that four parties were to be formed; that the town was to be set on fire in various places; that attacks were to be made in different quarters; and that for that purpose, the cannon were to be seized, and all this was to be consequent on the attack at Lord Harrowby's. Wilson further stated, that Gee's-court where Dwyer lived were all in it,

for Dwyer had given them reason to suppose he would embark in the transaction. He tells you that he felt it necessary to do so, for his own personal security. This is at once a confirmation of the truth of the statements both of Dwyer and Hiden. They have had no communication together; Dwyer had given the prisoners reason to suppose they would be joined by the people at Gee's-court; and Wilson communicated that circumstance to Hiden, which confirms, in a remarkable manner, the evidence of Dwyer.

Now, gentlemen, I will ask you with confidence, what becomes of the observation that this case rests entirely on the testimony of Adams? Am I not justified in saying, that if Adams were the most infamous of witnesses, and you were even to blot his evidence from your notes, there is abundantly sufficient to bring home the case to the prisoner at the bar?

Passing from this evidence, let us come to the events of Cato-street,—to facts which cannot be contradicted or disputed, which speak for themselves, and speak so strongly, that my learned friends have been compelled to admit that there was at least an intention to assassinate his majesty's ministers. But, I conceive that if you shall be of opinion that such an intention was entertained,—an intention to assassinate not merely this or that individual in the government, but by one great and sweeping blow to destroy the whole cabinet,—this will go a great way indeed to satisfy you, that there were further objects in contemplation; because I cannot suppose that from any motives of enmity or revenge directed against individuals of whom the prisoners could have no personal knowledge, they would have embarked in a design so dangerous and so wicked. If they formed the design of murdering the ministers of the Crown, it is impossible to suppose that this was intended to be effected with any other than an insurrectionary view. I think, therefore, that in this concession extorted from my learned friends by the force of the evidence, they have abandoned the case of the prisoner; for, with all their ingenuity, they could not even shape a plausible case in support of their supposition that such a blow could have been intended with any other view than to form the basis of an insurrection, in which it was hoped and expected that the great body of the people would instantly join. As to the trifling means of the parties, that consideration, in the view I have taken of the case, is no objection against the reality of the design. All that they conceived to be necessary for the attainment of their object was to strike one great blow,—to exhibit an appearance of force; and they confidently expected this would be followed by a general revolt they might lead and conduct at their pleasure.

Without entering into details of what took place in Cato-street, I beg leave to direct your attention for a moment to the nature of the preparations. If the conspiracy was merely

with a view to plunder, why prepare materials for loading cannon?—why prepare so large a quantity of ammunition? My learned friend has attempted some explanation of the motives of that part of the design which related to the setting fire to the metropolis. If he thought such explanation necessary, and endeavoured to show how it agreed with the supposed design of plunder, it was equally incumbent on him to give a similar explanation as to the other circumstances of preparation made by the prisoners: but he has not attempted to do this. And, in truth, the materials collected were inconsistent with any other view of the case than that which I have stated; and they confirm beyond the possibility of doubt the story told by Adams, Monument, and Hiden; the latter of whom was so anxious immediately to give information, for the purpose of counteracting this most infamous plot.

But it is objected that we have not called other witnesses who might have been produced—that there is a person of the name of Edwards whom we have not examined. The fact is, we have called two persons who were engaged in the conspiracy with the prisoners; and if we had called others, it would only have had the effect of leading to a still more copious torrent of invective from the other side. We have called two witnesses, and we have confirmed their testimony beyond the possibility of dispute. But when my learned friends say we have not called certain other persons to support the case of the prosecution, how much more strongly does the observation apply against the prisoner who has witnesses in his power to produce, his own friends and associates—Potter, Palin, Harris, and Hall, and others who were present on the same occasion, who have been mentioned, and who might have been called to show that the account given by the witnesses for the Crown is false and fabricated; and yet not one of them has appeared to contradict the statement made on the part of the prosecution.

But this plot, it is contended, had no political object in view. Observe the language and conduct of the prisoner. The numbers at Cato-street were not so many as he expected;—they amounted only to twenty-five. He was alarmed;—he was apprehensive they might desert him. He endeavoured to inspire them with confidence. He warned them of the danger of retreating.—It would prove, he said, another Despard's job. Why that allusion, but because his enterprise was of a similar character?—Can it be explained on any other principle? Does it not show what was passing in his mind at the time, and evince the true nature of the enterprise more satisfactorily than evidence of any other description? But to pursue this still further:—Davidson is apprehended, and immediately exclaims, "let those be damned who will not die in liberty's cause;" and he sings a line of the admirable ballad of the poet Burns, 'Scots wha' ha' with Wallace bled.' Does not this speak for itself,

in terms too distinct to be misunderstood? Does it not unfold his heart and mind to our observation, and show what was passing there at the time; what was the object of the criminal enterprise in which he had embarked; what it was for which he was then a prisoner?—Assassination to be followed by plunder?—No, but assassination to be followed by revolution, and the establishment of that which he miscalled liberty. And here it is impossible not to deplore the self-delusion of these misguided men who, engaged in an atrocious design against the laws and constitution of their country, and which was to commence by the sacrifice of some of the best blood of the nation, by the murder, among others, of that distinguished individual who had led our armies to victory, and exalted among the nations of the earth the name and character of Englishmen, could suppose that they were treading in the steps of the great Scottish chieftain, who, with the spirit and the energies of a real patriot, laboured to free his country from a foreign yoke; and with inadequate means and resources, but animated by an unconquerable spirit, kept at bay the power of England, performing deeds of the most heroic valour, till he fell at last a victim to the basest and most degrading treachery.

I have gone through this cause. I feel myself exhausted, and I am afraid I have worn out your patience. My omissions will be supplied by my lord. Let no suggestions made by my learned friend operate on your minds, except so far as those suggestions arise out of, and are supported by the evidence. It is easy to scatter insinuations, and to impute blame; but you, I am sure, will not consider accusation, still less dark and indistinct surmises, as proof. You are told that the prisoner is contending with the power of the Crown, but he is contending before a British jury, who, if they were to incline to either side, it would be in favour of the accused: and I am sure, knowing as I do those who are associated with me upon this occasion, there is no wish or disposition, on the part of the prosecution, to press against the prisoner any point beyond what justice requires. We have no other duty, and can have no other desire than to lay the case fairly before you. It will be for you, then, receiving the law from his lordship, who is bound by the same obligation as yourselves, to say whether, upon the evidence which has been laid before you, you are satisfied that the prisoner is guilty of the crime with which he is charged. Every assistance which extensive talent and long experience, and knowledge of the law could afford to a person in his situation, he has received. Nothing has been wanting to his defence.

Before I conclude, I beg leave to repeat what has been said by my learned friend, the counsel for the prisoner, that if you entertain a reasonable doubt on the subject of his guilt, it will be your duty to acquit him: but, on the other hand, as the guardians of the public

peace, acting under the sacred obligation of the oath which you have taken, if you are satisfied that the case is proved against him, you will discharge your duty, without looking to the consequences, with that firmness, impartiality, and integrity which have ever been the distinguishing characteristics of an English jury.

SUMMING-UP.

Lord Chief Justice Abbott.—Gentlemen of the Jury;—This is an indictment against Arthur Thistlewood, the prisoner now at the bar, and several other persons, who, in the progress of this trial, have also appeared at the bar in order that they might be identified by some of the witnesses, charging them with the crime of high treason. That crime has been truly stated to you to be the greatest known to the law: it is so, because it comprises not only individual and private evil as most others, but a great and extensive public evil also. A charge so serious, requires at the hands of an English jury, and will, I am sure, from what I have already seen, receive from you the most grave and mature consideration.

The charge upon the record is divided into several heads:—the first is, that of compassing and imagining to depose the king—the second, that of compassing and imagining to put the king to death—the third, that of compassing and imagining to levy war against the king, in order to compel him to change his measures and councils—and the fourth, that of actually levying war against the king. Two of these charges, namely, the compassing and imagining the death of his majesty, and the actually levying war against him, were declared to be treasons by a statute passed as long ago as the reign of king Edward the third. In the construction of that ancient statute it had been held, not only in many cases passing in judgment in our Courts, but also by the opinion delivered to us by grave and learned writers upon the law on that subject, that all conspiracies and attempts to depose his majesty, and all conspiracies and attempts to levy war against him, were overt acts of a treasonable intention to take away his life, because, as experience shews us, the death of the sovereign generally follows his deposition. In order, however, to remove any mistake that persons might fall into, a statute was passed in the reign of his late majesty, similar in substance, and nearly so in language, to several statutes which had been formerly passed, but which operated for a season only, by which the compassing or imagining to depose his majesty, or the compassing and imagining to levy war against him, or to compel him to change his measures and councils, were each declared to be a substantive treason. And as the evidence in this case points more directly to the compassing to depose and to levy war against him, than to the actual intention to take away his life, the most simple way of presenting this case to you, is, to direct your minds to those parts of this in-

dictment, which charge the compassing and imagining to depose the king, and to levy war against the king in order to compel him to change his measures and councils.

You will observe, that the substance of the charge is made to consist in the intention—in the compassing, imagining, and intending, and not in the actual deposition of his majesty, or in the actual levying war;—such intention, however, must be manifested and followed up by certain acts of the parties, which acts must be (as they are in this case) stated on the record, and proved to the satisfaction of the jury, as evidencing the traitorous intention.

Now the acts charged on the indictment are, as applied to each count, the same;—they are first, the meeting, conspiring, and consulting amongst themselves to destroy the government of this realm as by law established—meetings and consultations to levy war against the king, to subvert the constitution and government as by law established—meeting and conspiring to assassinate and murder divers of the privy council of the king—maliciously and traitorously providing large quantities of arms and weapons, in order to arm themselves and others, for the purpose of raising and levying war against the king—meeting and conspiring to seize divers cannon, warlike weapons, arms, and ammunition, in order to arm themselves and others, for the purpose of raising and levying war against the king—meeting and conspiring to burn and destroy divers houses and buildings in and near London, and divers barracks used for the reception and residence of the soldiers, troops, and forces of the king, and to prepare combustibles for the purpose of burning and destroying the said houses, buildings, and barracks—and further, the actual assembling in arms with intent to assassinate, kill, and murder divers of the privy council of the king employed in the administration of the affairs and government of this kingdom, and to levy war against the king.

These, gentlemen, are the facts charged in the indictment as (in technical language) the overt acts, that is, as the evidence of the intention, and the steps and measures adopted in order to carry that intention into effect; to these acts therefore the evidence that has been laid before you has been directed, and if these acts are proved to your satisfaction, or any important part of them, it will then be for you to consider, whether the criminal and traitorous intention charged—to depose the king, or to levy war against him—is satisfactorily proved, and if so, as each is treason, it is not material to distinguish between them.

You have heard in this evidence, of a very extraordinary (I may say for the present) project, alleged to have been entertained by this person now at the bar, and others associating with him; a project, as it is said, to take away the lives of all the persons most confidentially employed in the administration of the government of this realm by his majesty, when they should be assembled at a dinner, and

that some of the conspirators were to proceed at the same time, and others immediately afterwards, to set on fire buildings in various parts of the town, to seize some pieces of artillery, to take possession of the Mansion-house, and to declare that a new government was established; thereby to overthrow the existing government and the subsisting order of things, and to substitute something else in its place. This is the general nature of the project imputed to the prisoner at the bar; it is important for you to consider whether that project is to your satisfaction proved. The question is, not whether it was likely to be successful, but whether it was intended by these persons, and whether steps were taken to carry it into effect. The improbability of the success of such a scheme is fit matter for your consideration in weighing the evidence that is laid before you, in order to prove that the scheme did exist; but your inquiry is, did that scheme exist or did it not? and is it proved to your satisfaction by the evidence that has been laid before you.

A very large body of evidence has been laid before you, in order to prove, that such a project, however wild and visionary, was in fact contrived, and that steps were taken by the prisoner and others to carry it into effect. Some witnesses have given you minute details of various conversations taking place at various times; and in weighing the effect of that testimony, it seems to me that you will do well to consider, rather the general substance and import, than the precise accuracy of every particular expression that may have fallen from any one witness: a long detail will hardly ever be free from some occasional error or mistake; the question properly, is not whether there be any trifling error or mistake, but whether the substance and body of the testimony laid before you be or be not in your judgment true.

Some of the persons who have been called before you to give evidence upon this occasion are truly represented to be persons who acknowledge themselves to be accomplices in this most traitorous design — that observation, however, does not apply to all who have given evidence; and much observation has been made upon the credit that ought to be given to persons in that situation. Upon that subject I will only say, that by the law of this, and I believe of every other country, accomplices are witnesses competent to be heard: the credit that is to be given to them, is matter, in this country, for the consideration of gentlemen in your situation; and that credit must depend, in a great degree, on the probability of the story they tell, or on the confirmation that may be given to them from other and pure sources, so far as what they say is capable of confirmation, and upon the absence of that contradiction which may be adduced if the story related be not true.—There is no rule of law which says that the testimony of accomplices must be credited;—there is no rule of law, or of practice, that has said it must be

rejected:—to say it must be, would offer the greatest possible latitude to crimes; because, as was truly observed by one of the learned counsel for the prosecution, if bad men once are given to understand they are in no danger of being brought to justice from disclosures made by those who participate in their crime, they will trust to this and proceed in their wicked designs; whereas we know bad men entertain great distrust of each other, which often prevents the perpetration of those offences which cannot be committed without the concurrence of several persons.

Having made these general observations in order to direct your attention, in the best way that I am able, to the evidence that has been laid before you, I will now, as it is some hours since the evidence was distinctly heard by you, proceed to read a great part, if not the whole evidence; so much as occurs to me as necessary to submit to your consideration, and more if you desire it.

The first witness called was Robert Adams, on whom so much remark has been made by the learned counsel on one side and the other. According to his account, he must be considered as an accomplice in the treasonable conspiracy, if any treasonable conspiracy existed, because he acknowledges that he attended many meetings, and was one of those who were assembled to carry it into effect. The account he gives of himself is, that he is a shoemaker; that he formerly belonged to the royal regiment of Horse Guards; that he has left that service eighteen years; that he first became acquainted with Brunt, one of the persons indicted, about the year 1816, at Cambray, in France; that his first introduction to the prisoner Thistlewood, was on the 13th of January, at his own lodgings in Stanhope-street, Clare-market. He says, "I was introduced by Brunt, who, in going into the room, said to Thistlewood, this is the man I was speaking to you about; Thistlewood said, 'You were once in the Life-guards,' I said no, I had belonged to the Blues; he said, 'I suppose you are a good soldier,' I replied that I could use a sword to defend myself, but I was not so clever as I had been, not having been in the habit of using arms for some time." Then he says that Mr. Thistlewood began to allude to the genteel people of the country, endeavouring to make them appear mean and contemptible; saying, that there was not one of them who was worth so small a sum as ten pounds, that was worth any thing for the good of his country: as to the shopkeepers of London, he said they were a set of aristocrats, and were all working under one system of government; that he should glory to see the day that all the shops were shut up and plundered; that Mr. Hunt was a damned coward and no friend to the people, and he had no doubt acted as a spy for government; that Mr. Cobbett, with all his writings, was of no good to the country, and he had no doubt that he too was a spy as well as Mr. Hunt. He

believes that finished the discourse. He says, he was afterwards confined for debt in White-cross-street prison; that he saw Mr. Thistlewood one Sunday at the White Hart in Brook's-market, a house kept by a person of the name of Hobbs; besides Thistlewood, Ings, Brunt, and a person of the name of Hall (who is not one of those indicted) were there, and Tidd, who is one of the persons indicted, came in; "we met in a room in the back yard." The witness says, that he came out of prison on the 30th of January, that on the 31st he saw Thistlewood the prisoner in a back room on the same floor where Brunt lived, which is in Fox-court, Gray's-inn-lane; Brunt, Ings, and Hall who is not indicted, and Davidson who is, were present; nothing particular took place on that night; that he met them again on the Wednesday evening; Thistlewood, Brunt, Davidson, Harrison, and a person of the name of Edwards, who is not indicted, were present; nothing particular passed on that occasion, only that he saw a number of pike staves; Thistlewood was anxious to have them ferruled, and expressed himself rather surprised that Bradburn, who is one of the persons indicted, was not come; and Davidson in particular, expressed himself dissatisfied; he said that Bradburn had been supplied with money to buy ferrules for those staves, and he was dissatisfied that they were not done: he says, "the staves were quite green, and appeared as if they had just been cut." The staves have been produced to you, and from the appearance of them you will probably be able to judge, whether at that time they would or would not have the appearance described.

He does not know that any thing else passed at that meeting; but the meetings continued to be held twice a day in that room, up to the 23rd of February: he says that he heard Brunt say that he had hired a room for Ings; there was no furniture in the room. He says, "One evening afterwards, about ten days before the funeral of his late majesty, I went up into the room. Thistlewood and Harrison were sitting before the fire; they made room for me, and I sat down between them. Harrison told Thistlewood he had met one of the life-guards, who told him that as many of the horse and foot as could be spared would be at his majesty's funeral; that this would be a favourable opportunity to kick up a row, and see what they could do that night, which quite met with the prisoner's approbation, and he thought it would be a good opportunity, and he had no doubt if they could take the two pieces of cannon from Gray's-inn-lane, and the six pieces from the artillery ground, they would, before morning, be able to put themselves in possession of London: that if any communication went to Windsor, the troops would be so tired, when they got to London, they would be able to do nothing. The prisoner said, he thought it might be so arranged, that they could prevent any orderly leaving London for

Windsor; that it would also be necessary to get possession of the telegraph over the water, to prevent any intelligence being conveyed to Woolwich; that by this time they should be able to form a provisional government, who were to send to the sea ports to prevent any gentleman from leaving this country without a passport from this provisional government. He spoke of Dover, Brighton, Ramsgate, and Margate, especially of Brighton, not that he thought the new king would be able to be there or even at the funeral of his father, on account of his then illness. He said it was of no use for the new king, speaking of his present majesty by that name, to think of wearing the Crown; that the present family had inherited the Crown long enough. Brunt and Ings afterwards came into the room, and Thistlewood communicated to them what had been said. Brunt and Ings heard him, but positively declared that there was nothing short of the assassination which they had in view would satisfy them." From this it must be inferred, if what this witness says is true, that the conversation between these persons was about assassination; and it is further to be observed, that if what this witness states is true, it is clear that that had been talked of at a former meeting. He says, Brunt had told me there were two or three of them who had drawn out the plan with a view to assassinate the ministers at the first cabinet dinner which they had: they scarcely ever met but this was the subject of conversation. "On Saturday, the 19th of February," he says, "I went again to the room in Fox-court, about eleven or twelve o'clock in the forenoon; I saw Thistlewood, Davidson, Harrison, Ings, Brunt, and Hall there, on my going into the room; they were all set round the room in a deep study; in about a minute they all got up, turned round, and said, well then it is agreed,—we are come to the determination that if nothing occurs between this and Wednesday night, on the next Wednesday night we will go to work: it was said they were all so poor they could wait no longer. Thistlewood proposed that the committee should meet next morning at nine o'clock, to draw out a plan to go by, and he said to Brunt, you had better go round this afternoon and acquaint what men you can bring forward, in order to bring them to the committee room to-morrow-morning. Brunt said he had some work to do, and he thought he should not have time, but he would get up in the morning and acquaint a few; but that they did not want a great many to be in the room. Brunt was about to leave the room when the prisoner called to him, and said, it would be highly necessary that all who attended the committee the next morning should bring arms with them in case any officers should come up, and Brunt said, if any officer was to come into the room he would run him through." Then he proceeds to say, "On Sunday morning I went a little after eleven; it was so dark, from the fog and the snow,

that I did not see who was there till Tidd spoke to me; there were Thistlewood, Brunt, Ings, Hall, Davidson, Harrison, Cook, Bradburn, Edwards, Wilson, and myself there. I found they had not entered on the business upon which they had met. The prisoner, on looking at the number of heads, said, I think it is time to begin the business; counting the heads, and seeing twelve, he said I think that is quite enough to form a committee. Tidd was proposed to take the chair, by Thistlewood. Tidd took the chair, and sat down with a pike in his hand. Thistlewood was on his right, and Brunt on his left hand. Thistlewood began, and said, gentlemen, I presume you all know what you are met here for, and turning to the door, said, the west-end job. Brunt said, mention their names, what signifies; but was called to order by the chairman. Thistlewood said, gentlemen, we are come to this determination, as we are all of us tired of waiting so long, to do this job. As we find there is no probability of the ministers meeting all together between this and Wednesday night, we are come to a determination to take them separately, at their own houses; we shall not have an opportunity of destroying so many as if they were to dine all together, if we take them separately; but we must content ourselves with getting two or three, or four, as we can get them. I suppose it will take as many as forty or fifty men to do the west-end job; and I propose, at the same time, that the two pieces of cannon in Gray's-inn-lane, and the six pieces of cannon at the Artillery-ground, shall be taken. Cook proposed to take the lead, and to take the command at the taking of those cannon: he proposed, after these were taken, to take the Mansion-house as a seat for the provisional government." He says, then they were to make an attempt upon the Bank of England: he says, Cook proposed further, that Palin should be the man intrusted to set fire to the buildings in different parts of London. This was all that passed on that subject; but Thistlewood said there was time enough, between that and Wednesday night, to settle and improve it; but he would drop the subject for the present, as Brunt had a proposition to make: upon this, he says, "Brunt came forward to state his plan; but Thistlewood said, 'Stop, my proposition had better be first put from the chair;' it was put from the chair, and carried unanimously. Brunt now came forward and proposed that they should assassinate as many of the ministers as they could, on Wednesday night, if no opportunity of their dining together occurred before that time: then he further proposed, that the men who should go for the assassination of the ministers should be divided into separate lots, and that one man was to be selected out of each lot to give the blow, and whatever man it fell upon should be bound to do it or be murdered himself. Upon this I asked Brunt if he supposed it was not possible for a man to attempt such a thing and fail in it, and if he did fail, should he be run through upon the

spot? He said no, certainly not, unless there was the least sign of cowardice: if he failed in doing it, and was thought a good man, he should not be run through. Brunt here ended his discourse. It was put by the chairman in the same manner as Thistlewood's measure, and agreed to. About two minutes afterwards, before any thing else occurred, Palin, Potter, and Strange came in." Palin and Potter are not persons indicted, nor is Cook, who is one of the persons spoken of by this witness as being present. Cook, Potter, Palin, and Hall, four persons now named, are not included in the indictment. Strange came in also. "They were asked to sit down, and Thistlewood told them of plans that had been proposed: they agreed to them the same as the rest had done. After this Palin got up and said, that agreeing as he did to the plans which had been proposed, there was one thing which he wanted to know: there were many objects proposed, and to carry all at one time, if it could be done, would be a great acquisition. "You talk," he says, "of taking from forty to fifty men to the west-end job; now, I want to know where the men are to come from that are to take these cannon in Gray's-inn-lane, and those at the Artillery-ground: no doubt you know better than me what strength you have got." He says, "I cannot say at present what number I can bring forward. I want to know also," said he, "in calling upon the men I intend to go to, if I can tell them, in fact, what is to be done." The Witness says, "Upon this the chairman said, that no doubt Mr. Palin knew the men he had to depend upon. It was agreed that Palin should make such communications as he might think prudent, and Palin was satisfied. There was nothing transacted regularly in the chair after that; but they began to think of going home to get their dinners, in order, in the afternoon, to go to their men;" and the prisoner said to Brunt, "Oh, well thought of; now, Mr. Palin is here, I would advise you to take him to the spot close by, and see whether it is practicable or not." That was, to go to the new Furnival's-inn-building, in Holborn, to see whether it was practicable to fire it; they went, and returned in about ten minutes, when Palin said it was a very easy job, and it would make a damned good fire; then they began to depart.

Now much observation was made to you upon the utter incredibility of this, because, being a new building, it could not easily be set on fire; according to the appearance in the street it is so, but whether it is completed or not inside I do not know. This, however, is most important; it was observed that if it was untrue Palin is a competent witness, and the prisoner might have called him; and Cook is another who has not been indicted: both of whom are competent witnesses for the prisoner. Neither of them could the Crown compel to give evidence, but they might be called by the prisoner, because they would not then be called to criminate themselves; and

they might have denied, if consistently with truth they could have denied, any conversation like that which this man speaks to. He says, "The prisoner said, before they left the room, he thought it would be necessary to get the men together and give them a treat. Brunt turned round, and said with an oath, although he had not got much work, he had a pound note which he would apply to that purpose; and the prisoner then inquired whether they might be taken to the White Hart; that was a place where they had formerly met, but Brunt said he did not much like to go there after what had been said; he said his own room would do, if he could send his boy and apprentice out of the way. Thistlewood then talked of his own house, but on giving it a second thought, he said that will not do, as an officer lives opposite, and if he should perceive men coming backwards and forwards it would give suspicion." He says, "I believe that finishes the Sunday-morning business." He says, "On the Sunday evening I went to the White Hart, and had some conversation with Hobbs. On Monday morning I went again to the room about ten o'clock; Thistlewood, Brunt, Harrison, Hall, and Ings were there, and others I do not recollect. I said, I had something to communicate to them, and told them that Hobbs, the landlord of the White Hart, had told me that two officers had been there, and that they asked whether there was not a radical meeting at his house; from which he inferred that there was information given at Lord Sidmouth's office, that there was a meeting of that description held there. "Upon this Harrison" (to use the expression of the witness) "turned round to me like a bull dog, and said, Adams, you have acted wrong, for if you had heard any thing it was your business to come to me or Mr. Thistlewood. I said I did not conceive that I had any right to withhold it from any one; that I thought it my duty to communicate it to all, as it concerned all. They swore at me again, and said I had no business to communicate it to any, but to them." He says, "I argued with them that I had acted right in communicating to them what I had heard. They then proposed breaking up to call upon their men, and also to attend at a meeting called the Marylebone Union: before we parted, I was appointed to come again to Brunt's room, that evening, to tell any person who came, that there was no meeting" they having determined to go themselves, according to the testimony of the witness, to the Union Club. He says, "I went to Brunt's room, and Potter soon joined me. We went to the White Hart, and Palin and Bradburn came there to us. On the Tuesday morning," he says, "I went to the room again: there were then present, Brunt, Thistlewood, Ings, Hall, Davidson, Harrison, Wilson, Palin, Potter, and Bradburn. While there, Edwards came in and went up to Thistlewood and told him there was to be a cabinet dinner next night. Thistlewood said I don't think that is true. A

newspaper was sent for, and read by Thistlewood, it contained an account that the cabinet were to dine at Earl Harrowby's, in Grosvenor-square, on Wednesday evening." Then he relates that very terrible expression used by Brunt, which I need not repeat to you. He says, "Thistlewood proposed then that a committee should sit directly to form a fresh plan regarding the assassination. I interrupted him, and called to their recollection what Hobbs had said to me: upon this Harrison walked backwards and forwards, and said if any man attempted to throw cold water on the concern, he would run that man through with a sword. I was put out of the chair and Tidd was put in. Thistlewood wanted to proceed in the business, when Palin said, stop, I want to be satisfied about what happened yesterday before we proceed any further. Upon this" he says, "after some ceremony, Brunt proposed that there should be a watch put upon the earl of Harrowby's that night." They seem to have considered that if they kept watch there, and saw no police officers or military, or any preparations to prevent their design, they might fairly conclude their design was unknown, if what the witness says is correct. Then he says, "The prisoner, Thistlewood, said he hoped every body would be satisfied if no police officers or soldiers went into the house; and that they would do what they had talked of to-morrow evening; the plan of the Sunday-morning was altered as respected the assassination. Thistlewood then proposed that there should be forty men allowed, and more if they could be got; he said there would be fourteen or sixteen of the ministers which would be a rare haul to murder them all. I propose, he said, going to the door with a note to present to earl Harrowby: when the door is opened, for the men to rush in and seize the servants, and present a pistol to them, and directly threaten them with death if they offer to make the least resistance or noise. This being done, a party were to rush forwards to take the command of the staircase; two men were to be placed at the stairs leading to the upper part of the house, one was to have fire-arms, to be protected by another with a hand-grenade in his hand; a couple of men were to take the head of the stairs leading to the lower part of the house, they were to be armed the same as the others at the upper stairs; if any servants attempted to make any retreat from the lower part of the house, or from the upper part of the house, these men with the hand-grenades were to clap fire to them and fling them in amongst them; two men at the same time were to be placed at the area, one with a blunderbuss, and another with hand-grenade; if any body attempted to make their retreat from the lower part of the house that way, they were to have a hand-grenade thrown in amongst them there; at the same time all these objects were to be accomplished by securing the house, those men who were to go

in for the assassination were to rush in directly after, where their lordships were, and to murder all they found in the room good or bad; he said if there were any good ones they would murder them for keeping bad company. Then the witness says, "Ings" who is represented to be a butcher, "volunteered to enter the room first with a brace of pistols, a cutlass, and his knife in his pocket, with a determination, after the two swordsmen, that were appointed to follow him, had despatched them, to cut every head off that was in the room, and the heads of lords Castlereagh and Sidmouth he would bring away in a bag, he would provide for the purpose two bags."—A circumstance worthy of your notice, because you will bear in mind that there were two empty bags found on the person of Ings when he was taken into custody. He says "he said he intended, when he got into the room, to say—'well, my lords, I have got as good men here as the Manchester Yeomanry, enter citizens, and do your duty.' Upon this word of command from Ings the two swordsmen were to enter, to be followed by the rest of the men with pikes, pistols, cutlasses, or whatever it might be, and to fall to work immediately in murdering them as fast as they could;" he says, "Harrison, who has been a soldier, and I, myself, were picked out, being the only men amongst them used to the sword, and men of the greatest strength and power. Harrison had been a soldier in the life-guards. On Harrison being proposed to go into the room, Thistlewood asked me if I would go in;" he says "I considered my life in danger" (there had been considerable threatening language if he is to be believed), "and I agreed to go." After the execution was done in the house, they were to leave the house as quickly as possible: Harrison was the man that was appointed to go to King-street Horse-barracks, and to take one of those fire-balls and throw it amongst straw to set fire to the premises; after they left Grosvenor-square, Harrison, Wilson, and the rest of the party were to proceed to Gray's-inn-lane to the City Light-Horse barracks, for the purpose of meeting a party of men that were intended to be planted there, and in case those men found themselves not sufficiently strong to take the two pieces of cannon at the Light-Horse barracks, they were to wait their arrival and would assist them; they were to proceed from thence to the Artillery-ground, where Cook was to be appointed; in order to lend him a hand in case he had found himself not sufficiently strong to take the six cannon there. Cook was to wait there for the arrival of Thistlewood if he did not like to proceed; he was to bring the cannon from the ground into the street, and to load them in order to be ready to fire on any persons that might interrupt him: but if he found his strength sufficient to enable him to proceed, he was to advance from there to the Mansion-house, if he found himself capable of advancing to the Mansion-

house he was to divide the six cannon into two divisions, and take three on one side and three on the other; then he was to demand the Mansion-house, and on a refusal he was to fire at it on both sides, it was thought on doing that they would soon give it up—the provisional government was to sit there: after the Mansion-house was taken the Bank of England was to be the next place to be attacked, they were to plunder it of all they could get, but not to destroy the books if they could help it, for they thought by keeping possession of the books, that would enable them to see further into the villainy that had, he said, been practised in the country for some years past; the regulation of the further proceedings was to be left till Wednesday; Palin's plan was determined on, but the time was not then settled. After the chair was left, Harrison proposed that there should be a counter-sign to be communicated to all their friends, the countersign was Button; the man that came up was to say, *b, u, t*, the other man was to say, *t, o, n*, these put together were to produce Button, this was a token by which they were to know each other. He says, "it was proposed that a man should stand at the end of Oxford-road to communicate to any man that came up to him the room where they were to meet the next night. In the afternoon I went to the house again; in going up stairs, I perceived a strange smell, on going in I found Edwards, Ings, and Hall there; Edwards was making fuses to put to the hand-grenades; Ings was dipping some rope yarn, picked for the purpose, into stuff to make, what they termed, illumination balls for Palin; Hall was dipping those into an iron pot and putting sheets of paper on the floor to receive these, after they came from the pot they were wrapped up in it to prevent their sticking to the hands. I stopped only a few minutes. On the same Tuesday evening, I went again, and then found two strange men I had never seen—one I found to be Harris, but I do not know the name of the other; Brunt and Thistlewood were there, Davidson went to keep watch at six o'clock; Tidd and Brunt went off to relieve him at nine o'clock, they started about half past eight, but Brunt returned in about five minutes, as Tidd had met with a man who was likely to be of great consequence and could not go. On looking round the room he asked me to go; as we went we met Edwards, I asked him if any thing particular had been seen, he said, whatever had been seen he should communicate to Mr. Thistlewood; Brunt and I went to Grosvenor-square, we saw Davidson in the square and another man that I did not know." He says, "I told Brunt I was tired, and we went to a public-house at the corner of the mews where we had some porter, and where Brunt played at dominos with a young man, and we staid there till eleven o'clock, and then we went out and walked till twelve o'clock, and then we went home. On Wed-

nesday, the next day, I went again to Fox-court and I found Brunt in his own room; Strange came in alone, and soon after two more persons; I turned my head and saw some pistols upon the drawers, Strange and the men that came in tried the flints; Brunt then invited them into the back room; on going there, I saw several cutlasses, a blunderbuss, the pistols were brought in and the strangers began to put flints into them; they had not been long there before Thistlewood, Ings, and Hall came in; Thistlewood looked round and said, 'well, my lads, this now looks something like, as if there was something going to be done.' I complained of being in low spirits, and Brunt sent out for some gin and some beer; while the beer was being fetched, Thistlewood said he wanted some paper to write some bills on, such as newspapers were printed on, I said, I thought cartridge paper would do as well, and he, that is Thistlewood, then said who will fetch it? Brunt said my boy, or apprentice, shall fetch it; Thistlewood gave Brunt a shilling to send for the paper, half a dozen sheets were brought and Thistlewood sat down at a table to write three bills to stick up against the buildings that might be set on fire," the words, as the witness recollects them, were these: "Your tyrants are destroyed, the friends of liberty are called upon to come forward, as the provisional government is now sitting. James Ings, Secretary, 23rd February, 1820. In writing the last bill, I perceived Mr. Thistlewood to be extremely agitated, so much so that he could hardly write, he said he was very tired, and did not know what was the matter with him, but he could not write any more; he then proposed that Hall should take the pen, but Hall objected, another person, a stranger, afterwards took the pen and sat down to write what Thistlewood dictated to him:" what became of the papers he does not know.

The witness was then questioned as to what was contained in that paper; some doubt being entertained on the part of the judges whether it was proper evidence to be received under the particular circumstance of not having been seen in the hands of the prisoner, the Solicitor-general said, very properly, he should not press the contents of that paper, and therefore we have no account of it. The witness says, "while this paper was writing, Ings was preparing himself in the manner he was to enter the room at lord Harrowby's; he put a black belt round his waist for a brace of pistols, and another black belt across his shoulder; after this there was a bag hung to each shoulder, in the form of a soldier's haversack; he then placed a brace of pistols one on each side, and a cutlass; he viewed himself, and said with an oath, I am not complete now, I have forgot my steel and pulled out a large knife, and brandished it about as if he were in the act of cutting off the heads he intended. He said he intended to cut off two, and bring

them away, together with one hand of my lord Castlereagh, which might at a future day be thought a good deal of;—these expressions he had used many times." The witness described the knife; it was a large-bladed knife from ten to twelve inches long; the handle was bound with wax-end. Such a knife you will bear in mind was afterwards seized in the stable from one of the persons there who appears to have been Ings. He says, "while this was passing, the others were arming themselves. The first persons who left the room went about four or five. Palin came in about an hour before I left, and Thistlewood and Brunt on some business left the room, and then Palin said, gentlemen, I hope all that have met here this afternoon, are well acquainted with what you are going upon; in the first place you ought to think within yourselves, whether you are going to do your country a service or not; you ought to think whether this assassination will be countenanced by your country. If you conceive that the assassination will be countenanced by your country, and that the people of the country, after you have done it, will turn of your side; every man that flinches from his duty, or turns out a coward, ought to be run through: unless you come to this determination it is impossible to do any good." He says, "then a man, whose name I do not know, interrupted him. Thistlewood and Brunt had not then come in; the tall man said, you seem to speak as if every man were in possession of what we are going upon; if we turn out with a view to serve our country, I am not afraid of my life, and he who is afraid of his life, ought to have nothing to do with an affair like this. Brunt came in after this, and perceiving an alteration in the countenance of the meeting, he wished to know the cause; he was told there were some in the room who wished to know further of the plan. Upon this Brunt said, this is not the place to tell them that; they should go with him to the room in Edgware road, and there every one should be apprized of what they intended to do." He says, "I left the room first, and Strange and three or four others, that I do not know, went out afterwards. It was agreed they should walk two and two, in order to avoid suspicion." Then he gives an account of his going up Holborn, and that he was tapped on the shoulder. He says, "in this room there was a cupboard, in which there were swords, hand-grenades, and flannel bags for cartridges for the cannon—all the ammunition was not at Brunt's, but what they called the dépôt, which was at Tidd's house, who lived in the next room to myself. When I set off from Brunt's, I had a blunderbuss under my great coat, and Brunt gave me a broomstick, which was prepared to receive a bayonet, to carry. Among other arms at the dépôt were some pikes, some of them old files, and some of them old bayonet points; he says, that a man came up and told him to slacken his pace, as Brunt was gone back for something; he did

so. and went on to the end of Oxford-street; it seems he did not know this room in Cato-street, he was tired of staying, and was on his way back and he met Brunt, then he returned back with Brunt and went along the Edgware-road with him until they met Thistlewood, who took them to Cato-street: he says, "when I got to the stable-door Harrison came up and told me to go in, and I did so, I then saw Davidson sitting down and Wilson standing as if they were doing something to the pikes; I cannot say the number of persons there then; but at the conclusion there were, according to Thistlewood's account, eighteen above and two below; there was a carpenter's bench with arms of different descriptions on it, and there was a chest by the window where I placed myself; when I went in they were handling the different things, Tidd came in and proposed going to the square to see whether the ministers were getting together; Thistlewood was absent for some time, and when he came back I heard, below stairs, a great deal of talking, in consequence of that I went down where I found Thistlewood, Brunt, Davidson, Harrison, and Wilson; on seeing me they said the carriages are getting there as fast as they can, no less than six or seven are already there: Brunt turned round and said, what a haul we shall have among them. After this I went up stairs, Thistlewood was much agitated, and Tidd came in very little afterwards. Ings turned round and said, do not think of dropping it now; if you do, I shall hang myself; it was said Tidd would not come; Thistlewood said he would forfeit his existence if Tidd did not come; afterwards he came. Thistlewood hoped they would not give up what they had begun; if they did, it would turn out another Despard's job;" alluding to the case of a person of that name, of which you have heard; he says, "Thistlewood then began to count the number of men that were there, and said altogether there were twenty, and that that was plenty; he said fourteen would be sufficient to go into the room, and the other six would be sufficient to take care of the servants; on this, fourteen men were picked out, and Brunt produced a bottle of gin which was handed round. Thistlewood said the number is sufficient; supposing lord Harrowby should have sixteen servants, they are not prepared, we are. We can do what we have to do in ten minutes. Almost directly afterwards we heard a noise at the bottom of the ladder leading up to the loft." He says, "Thistlewood upon this took the candle, and looked towards the bottom of the bench." He says, "He turned round and put the candle at the bottom of the bench quite confused; at this instant the officers ascended the ladder, and took command of the room; two stood at the top of the ladder and presented two pistols, and said,—Holloa! is any body in the room? here is a pretty nest of you. We have got a warrant to arrest you all, and as such we hope you will go peaceably—One of the

officers who was then upon the ladder said, Make way, let me come forward—a group then got into the inner room, and I saw an arm rush suddenly forward, and at the same time I saw a pistol fired; as soon as the pistol was fired, the candle was put out, and it was impossible for me to see what passed. On this it was given out that one of the officers was murdered, and I got away and went home. I was apprehended on the Friday following, and have been in custody ever since." He was desired to look at the persons at the bar, many of whom he recognised. The person of Strange he did not recollect; whether any alteration of dress prevented it, I am not able to say. An observation has been made upon what the witness says were the words used by the officers, namely, "we have got a warrant to arrest you, and we hope you will go peaceably;" and it is said, that the officers did not say that they said that they had a warrant, but they observed that they were officers, and desired that the arms might be seized, or that they should surrender; the expressions have certainly much the same import, but which is the correct one it is impossible to say.

The witness was then cross-examined, and was asked what had carried him to this meeting; and he made use of an expression which was very improper, and ought not to have been used in this place, he answered, "My legs." He says further, "I went there under the pretension of assassinating his majesty's ministers to every outward appearance, but my inward intention was entirely against it. I had attended many meetings at which this plan was debated, and was chairman of one. Fear," he says "kept me to it. After leaving the army I went to Cambray, to follow my trade as a shoemaker, and there became acquainted with Tidd. I carried between thirty and forty pounds with me, it was my own. Brunt introduced me to Thistlewood, for the purpose of assassinating the ministers;—this was proposed to me by Brunt, before I ever saw Thistlewood; and I consented to be introduced to Thistlewood for that purpose. The first account I ever gave of what had passed was on the Saturday after; I did not give it under any understanding that I was to become a witness—my conscience accused me, I had acted wrong, and I made a vow that if God would spare me, I would make a disclosure of all I knew." Then he is asked, whether it was not because he would not like to be hanged that he disclosed this? to which his answer is, "I do not know who would." He says, "I had some of these feelings before I entered the room in Cato-street; but after I entered the room, and after the murder of Smithers was committed, I was worse." Now, gentlemen, you will judge whether the picture which this witness exhibits of himself, is not the natural picture of the mind of a bad man engaged, as he was, in a very wicked design, fearful of his own accomplices, afraid to go on, and afraid to recede, equally apprehensive

of both, irresolute and undetermined whether he should make any disclosure till he was in custody; at which time it was necessary instantly to make a disclosure, which he says he did, without any promise of any reward.

He says, "The greatest number of persons that I ever saw assembled together was on the 20th of February, in the morning; there were about fifteen, all poor men for what I know." The prisoner, he says, gave money to Hall to fetch the newspaper. "The largest sum of money I ever saw was six shillings produced by Thistlewood to Brunt. I do not know where the men were to come from that were to do all this mischief." Then he was asked, you provided powder for the cannon, but you had no balls. Upon which he says, it was proposed to take a sledge hammer along with them, and knock off the tops of the iron railings, and that they would do greater mischief than cannon-ball.—He says that the prisoner said this. He says, "I do not know what is become of Edwards; I have not seen him since the 22nd of February. I have seen him as active as the rest of them." Then some questions were put to him as if importing that his was the hand that held the sword by which Smithers died. He says, "I was at the end of the room, under the Bench next Cato-street, four or five feet off; I saw the arm that extended from the door."

Upon re-examination he says, "The army was at Cambray when I was there, and I was carrying on my trade with the English soldiers there."

This, gentlemen, is the whole of the testimony given to you by this witness, Adams; and if this be true in substance and general effect, it does prove, not merely an intention to assassinate the several persons engaged in the government of the country, but shews also that that was only a part of a further and more extensive plan;—of a plan to seize the cannon, take possession of the Mansion-house, and establish a provisional government there, upon the vain expectation that if once such a blow could be struck, there were many people in the metropolis ready to join the standard of rebellion;—this hope will, I trust, always be disappointed, whoever shall at any time entertain it;—it however seems to have been entertained, if we are to believe this witness. It is observed, that he mentions, several times, a person of the name of Edwards, whose name is in the list of witnesses: why he is not called it is not for me to say; those who conduct the prosecution probably have their reasons for not laying before you further or other evidence than they have laid before you. Whether he is willing to be examined we do not know; probably he is; can you then conclude because he is not examined, that all that is said by Adams is untrue? It is for you to judge. The observation on the absence of witnesses, I am sorry to say, presses with greater force on the prisoner; because there are three or four persons present at conversations mentioned by

this witness, either of whom would be a competent witness to contradict Adams. With respect to the character of Adams, except so far as he implicates himself—except by his own account, no other objection is made to him—no witness is called to say any thing against him, either as to his former life or conversation; nothing appears against him before you, except the part he took in this transaction.

Another witness who speaks to the designs of these persons is Hiden, who certainly is of a very different character and description from the witness Adams; he is not to be considered as an accomplice, nay, according to the account he has given,—the truth of which it seems is admitted,—there is no doubt he does not labour under any imputation; because he disclosed what he knew early enough to have prevented the accomplishment of the object.

I will now read to you the evidence of Thomas Hiden. He says, "I have been a cow-keeper, I had seen Wilson formerly at a shoemaker's club; a few days before the 22nd of February I met him in the street, and he asked me if I would be one of a party to destroy his majesty's ministers at a cabinet dinner; that all things were ready—that they had such things as hand-grenades. He said they depended on my being made one of them, and that Mr. Thistlewood would be glad to see me; he told me the hand-grenades were to be lighted with fuses, and to be put under the table, and all that escaped the explosion were to die by the edge of the sword, or some other weapon." Then he says, "Wilson told him that they were to light up some fires by way of keeping the town in confusion for a few days; and it would become a general thing." He mentioned several houses, as some that they meant to set fire to. He says, "I told him that I would do it. I believe this was four or five days before the discovery at Cato-street. I went to lord Harrowby's the day before the discovery; I followed his lordship to the Park and gave him a note with information. I saw Wilson again, between four and five in the afternoon, in Manchester-street, Manchester-square; he called me, and told me there was to be a cabinet dinner that night at lord Harrowby's in Grosvenor-square. He told me I was to go up to Cato-street, to a public-house by the sign of the Horse and Groom, and there I was to go in—it is the corner of Cato-street—or I was to stop at the corner till I was shoved into a stable close by; I asked at what time, and he said by six o'clock. I asked him how many there were to be there, and he said about twenty or thirty. I asked him whether there were going to be any others in other places? and he said there was to be another party in the Borough; another in Gray's-inn-lane; one in Gee's-court, or in the city; I cannot be certain which. He said that all Gee's-court were in it, but they would not act unless the English were in it first; because they had been deceived so often. I understood they were

Irish people who lived in Gee's-court; it is in Oxford-street, opposite St. George's-market. He said, a gentleman's servant had been supporting some of the party, and would give them more money if they would act upon the subject. He asked me if I had a gun, and I told him I had a rubbishing one; that the lock was at a gun-smith's to repair: he said they would provide me with a gun and something to work it with." Then he goes on to say, "Wilson further told me there were two pieces of cannon in Gray's-inn-lane that they could get at very easily by breaking in some small doors; that there were four pieces of cannon at some Artillery-ground, which they could easily get by killing a sentinel." He says, "After doing the grand thing in the Square, Wilson said they were to retreat and meet somewhere in the neighbourhood of the Mansion-house: he told me to be sure and come to my time, or else the grand thing would be done before I came." Upon this he says, "I went to John-street about seven o'clock; when I got to the gateway into Cato-street, at the corner of the Horse and Groom, I saw Wilson, and Davidson the man of colour. Davidson said, I was behind my time: he asked me if I would go in, that Mr. Thistlewood was there. I told him I could not go in, as I had to go for some cream. I asked him what time they should leave there; he said about eight o'clock. He told me if I was not there before they were gone, I was to follow them to Grosvenor-square, and I should find them at the fourth house from the corner of Grosvenor-square, on the bottom side next Church-street."

On his cross-examination, he says it was four or five days before the 23rd of February, that he had this first conversation with Wilson: he had known him seven or eight months before. He says he cannot say from his memory on what day he gave the note to lord Harrowby. He says, "When Wilson told me of the plan, it was as we walked up and down Manchester-street." Then a letter is shewn to the witness, addressed to lord Castlereagh, which he says is his writing; it is the letter he gave to lord Harrowby, as he could not see lord Castlereagh to whom it was addressed, informing him of a plot to destroy his majesty's ministers.

Now, gentlemen, this witness, Hiden, you see, is entirely free from all impeachment either by any testimony against him, or his own conduct; and his own conduct, so far from impeaching him, is highly creditable. He says Wilson informed him of taking these cannon in Gray's-inn-lane, going to the Artillery-ground, and then to the Mansion-house, mentioning those matters shorter than Adams did. Whatever is said by any one person upon the subject of a conspiracy in which they are satisfactorily shewn to have been all engaged, is to be received not only against the person who utters it, but against all who have been concerned in it; you will consider, therefore, the effect of this evidence, and whether this is not a strong confirmation of the more detailed story that has been given by Adams.

The next witness called to give an account of their designs, is Monument, who is certainly an accomplice, not of so long standing as Adams, but he must be taken to have consented to the scheme so far as related to the assassination of his majesty's ministers. He says, "I am a shoemaker, and lived in Garden-court, Baldwin's-gardens, near Brook's-market. I am now a prisoner in the Tower. I remember meeting Thistlewood, at a person's of the name of Ford, a few days before the meeting in Finsbury-market; that is about two months before the 23rd of February; he afterwards called on me with Brunt; and he said, after a few minutes, that he wished to speak to me, and I went outside the door with him, and he said to me great events are at hand, the people are every where anxious for a change; I have been promised support by a great many men who have deceived me, but now I have got men who will stand by me. He then asked me whether I had any arms; I said no, I had not. He said every man ought to be armed now: he said all of them had got some arms; some had got a sabre, some had got a pike, and some a pistol: he said I might buy a pistol for four or five shillings; I told him I had no money to buy pistols, I was too poor to do any thing of the kind: he said he would see what could be done; he says about two or three days after this Brunt called on him, but nothing particular passed. Brunt said, he was rather in a hurry. Then he says, on Tuesday, the 22nd of February, Brunt called again, accompanied by Tidd, he told me, in explaining the cause of his absence, that the king's death had made an alteration in their plan necessary: what they were I should know at the meeting that was to be held the night after, at Tyburn-turnpike; that if I saw any people about them, I was to go to them and say *b, u, t*, and if they were friends they would answer, *t, o, n*, that he should call on me the following morning and tell me more particulars. The next day, Wednesday, Brunt called again, between four and five o'clock in the afternoon, and asked me whether I was ready to go with him; I told him my work would not be done before six o'clock: he then said, I must go to the person whom he had brought with him the day before, whose name was Tidd, and that he lived in Hole-in-the-wall Passage, Brook's-market. I went there, about half past six o'clock, and found Tidd at home: he said that several men that had promised to come, had not been so good as their word, and that he should not wait longer than seven o'clock. At seven o'clock he went to a corner of the room, and took out of a trunk a large pistol, and put it in a belt he had round his body: he then took about six or eight pikes, about a foot long, which he wrapped in brown paper; and he took a staff about four feet long, with a hole in one end of it. We went through Brook-street into Holborn, from thence up Oxford-street. While I was in the room, I asked him where we were going to: he said to a room in

the mews, in John-street, Edgware-road. As we were going along he gave me the pike-staff: I asked him whether we were going to the House of Commons: he said no, there were too many soldiers about there. I then asked him where it was we were going to, and at last he said Grosvenor-square; that there was a cabinet dinner there that evening; he did not say at whose house. We went on to Cato-street, in the Edgware-road; when we got there, underneath the archway leading to it, I saw two men whom Tidd seemed to know; he was a little before, and spoke to them. After stopping with them a few moments in the street, we went into the stable; we went up the steps, where we found, I think, about twenty-four or twenty-five men; but I had not been there above two or three minutes, when some person asked how many there were, and proposed to count them; but Mr. Thistlewood said, there was no occasion, for there were five-and-twenty. There was a tall thin man, with a brown great coat, sitting on one side of a carpenter's bench, with two belts on, and I think a sword by his side, who was speaking of the impropriety of going with so small a number as five-and-twenty men to lord Harrowby's. Upon this Thistlewood, the prisoner, said, the number was quite enough, for he only wanted fourteen men to go into the room, and supposing lord Harrowby had sixteen men servants, still that number was sufficient. The man in the brown coat said, after the business is done, and we come out, most likely there will be a crowd round the door, how are we to make our escape? Upon which Thistlewood said, you know the largest body is already gone, this is the smallest part; upon which Davidson said to this man it was not right in him to throw cold water upon their proceedings; if he was afraid of his life he might go, and they would do without him. Brunt said, sooner than they would give up the business he would go into the house alone and blow them up, if he perished along with them; and he said, for you know, we have got that which can do it, or words to that effect. Then the man in the brown coat said, that though he did not think it right to go himself, still as they were all for it, he would not be against it; and he proposed that all the men in the room should put themselves under the orders of Mr. Thistlewood upon which Mr. Thistlewood said, that every one engaged in that business would have the same honour as himself; and he proposed that the fourteen men who should volunteer to go into the room, should range themselves on the other side of the room, where the firing afterwards came from when the officers came;—about twelve or thirteen did so in the course of a few minutes. Tidd, who was one of the fourteen, was coming out to me to say I might choose my situation, when Mr. Thistlewood put him back, and said, you all know your places. After this Thistlewood was absent for a few moments; when he returned, he said they had received intelligence that the duke of Welling-

ton and lord Sidmouth were arrived at lord Harrowby's." That is all he recollects until the officers came up, and he was taken into custody.

Upon cross-examination he says. "I never spoke to Thistlewood till I saw him at Mr. Ford's, at Lambeth. I attended the meeting at Finsbury-market, but did not take much notice of what passed. I had no particular acquaintance with the prisoner at that time. I never knew Brunt till Thistlewood brought him to my house. I do not know Edwards at all. Three or four men were in the stable below, and the room was pretty full; the man in the brown coat was not Adams; I have seen Adams at Hicks's-hall and here. I have no recollection at all of seeing him before that. I remember seeing Strange in the room; he is rather short, and was standing by the side of me. I can tell nothing about Adams; I did not hear any person make any observation except the man in the brown coat. I was taken into custody in the room. I made no resistance. I had no arms."

Upon re-examination he says, "The room was nearly full when I came; I had been there about a quarter of an hour before the officers came. I knew no one there except Tidd, Brunt, Thistlewood, and Davidson." You recollect Adams said there was great uneasiness at this meeting, on account of Tidd not arriving till a late hour; Monument confirms him by stating that he and Tidd did not leave Tidd's house till seven o'clock. He says, "There was a candle in the room, I cannot say if there was more than one. There was a great quantity of swords and pistols, and two or three blunderbusses upon the carpenter's bench. Strange was apprehended at the same time with me; there were four in the room when the soldiers came in and took us all into custody." Then he is examined further about Edwards, and he says, "I was with Mr. Thistlewood at Whitehall, being hand-cuffed to him. He told me when I was examined before the privy council, I should say Mr. Edwards brought me to the meeting. I asked how I could tell such a falsehood, when he knew I had never seen the man; he laughed and said, that was of no consequence, for if I was asked what sort of a person he was, I was to say he was a man not much taller than I was, of a sallow complexion and dressed in a brown coat." It seems that Thistlewood then gave him a description of Edwards. This Edwards, gentlemen, attended at several of the meetings, but it does not appear that he was the proposer of any of the plans that were agitated. Then, in answer to a very proper question put by one of you, gentlemen, he says, "I have not, since my apprehension, had any conversation whatever with a man of the name of Adams, except speaking a word or two to him, but none concerning this business. We have been separately confined, and I never saw him except when I was taken up as a witness to Hicks's-hall, and when I was

brought up here to-day." They were both in custody, and kept separate, I suppose. This man also gives you an account that the scheme was not confined to the dreadful crime of assassination, but was to extend further; the commencement of the conversation with Thistlewood shews it,—“Great events are at hand; the people are every where anxious for a change; I have been promised support by a great many men who have deceived me; but now I have got men who will stand by me.”

This is the testimony of that witness. His brother Thomas, is afterwards called, but I shall not mention his testimony to you at present; but proceed to that of Dwyer, who speaks further to the designs of these persons. Thomas Dwyer, of No. 15, Gee's-court, Oxford-street, says, “before the 23rd of February, I became acquainted with Davidson, I saw him twice; on one of those occasions I became acquainted with Thistlewood; we went together to a public-house, at the end of Molineaux-street, near Cato-street; that was about the 9th, 10th, or 11th of February, either Wednesday, Thursday, or Friday; he said nothing particular to me at that time, he said he was in five or six different revolutions, and that Ireland was in a disturbed state at that time; I am an Irishman, and he said he had a good many of my countrymen. I saw Davidson on the afternoon of the 22nd of February; the next morning a person called on me and I went with him to Fox-court Gray's-inn-lane; he had a bundle wrapped up in paper; at Fox-court we went into the back room: I think he got the key from a woman in the front room, there was an old chair in the room;” he says afterwards, “some balls wrapped up with rope yarn were taken out of a cupboard, Harrison said it was a grenade. Thistlewood, Davidson, and a few more came in subsequently; Davidson had a blunderbuss, a pair of pistols, and a bayonet in his side pocket; one or two more came in afterwards, among whom was Brunt. After Davidson had shewn the pistols, he said that he had given twelve shillings for them, Brunt said that he would go out and buy a pair; Thistlewood said that some of the grenades were to be thrown into the Horse-barracks, and some more of them into lord Harrowby's to set fire to the house and blow it up; Thistlewood asked me how many of my countrymen I could muster for half-past eight that evening, I told him six or seven and twenty, he told me they were to assemble at the Horse and Groom, but I was to be at six o'clock at the Pomfret-castle, at the end of Barratt's-court, leading into Wigmore-street, Cavendish-square; that is a house frequented by Irishmen; I was to take a few of the best of them and go to the Foundling-hospital, knock at the Porter's-lodge, put a pistol to his breast, turn down round the right hand and there were five or six and twenty stand of arms at the next lodge; I was to seize them. At the same time another party were to seize two pieces of cannon that were at the

City Volunteers' Riding-school, in Gray's-inn-lane; he said that there were men that would make a breach in Finsbury, he said that there was to be a cabinet dinner at lord Harrowby's that day, and that they were to make an attack upon them there; after this I saw a bundle taken out of the cupboard, it was planted on the floor and a pint pot produced, the bundle contained gunpowder, which was measured with a tin measure into several woollen bags: Harrison did this. After that Thistlewood said there was a dozen of pike handles to be taken to Mary-le-bone; the remainder were to go to Finsbury; I was asked to take some but I refused, I had not seen them; I saw the bag of powder that was measured and the grenades were put in it; Harrison directed a person to go to the Horse and Groom in Cato-street with the pike handles; Harrison went away with those things in the bag, the powder in the flannel bags and I think the grenades also. He says, “I got home again about twelve o'clock, I told major James that day, and in consequence of what he said to me I went to the Secretary of State's about one or half past one.”

Upon cross-examination, he says, “I am a bricklayer by trade. Davidson introduced me to Thistlewood first on the 4th of February, I knew none of the party before, they never having known me before or I them, they opened to me their secrets; I do not know what there was in my character to induce them to trust me, except that I had been in that parish for fifteen years. When I was asked how many men I could get, I said it was a hard thing to inveigle a parcel of innocent men, and I did not know that I could get them, but I agreed to bring the men.” He says, “I was rather frightened while I was in the room. I was ordered to go to the Foundling Hospital for some arms, but I did not intend to do so, I wanted to get out of the place; I do not know a man of the name of Hucklestone. I was once in this Court on the trial of a woman who had robbed a man of 7l. but on no other occasion; I was in Ireland at the time of the rebellion, I was then quite a boy.” This is the whole of his evidence; if you think his evidence to be correct, here again Thistlewood announces his further plan about seizing the cannon in Gray's-inn-lane and Finsbury, and the general scheme, and he discovered a great part of those arms, afterwards produced on the table before you. According to the witness's account, he was asked by Harrison to go to this meeting at Fox-court, not knowing what was proposed; when he came there, he agreed to do it, though he had no intention to do so, but he did agree. A witness is called afterwards to impeach his testimony. There are four witnesses to explain to you the designs of these persons, two of them are accomplices, and, in general, none but accomplices, will be intimately acquainted with such dark designs; two others cannot be considered accomplices, but they must be men

whom the others supposed to be fit and ready to join in their project, and to whom, therefore, they made a communication, if that communication was made with so little reserve, as it seems to have been done; but still, if you believe the witnesses, the communication was made, and, therefore, they thought they were talking to men who were ready to join them.

A great many other witnesses have been called, to confirm the testimony given by these, but if these witnesses, without further examination of other persons, or any further testimony produced before you, shall be considered as having related the truth, the treason is undoubtedly proved; for their testimony has proved the meetings, consultations, and preparations of arms and ammunition for the avowed purpose of assassinating the king's ministers, and to bring about a change in the government of this country; nothing less than that can be the fair import of any of the discussions deposed to by any one of these four witnesses.

However, by the way of confirmation, they call Eleanor Walker, a servant to Henry Rogers, at No. 4, Fox-court, Gray's-inn-lane, who proves that Brunt hired a lodging for Ings, which Adams told you was the case.

Then Mrs. Rogers says Brunt took the room for Ings; he said he hoped he would pay though he knew nothing of him, except seeing him at a public-house. Now, that certainly is not correct, because, according to all the testimony, it is clear he had seen and known Ings, if not before that room was taken for him, yet he saw him afterwards.

Then another more important witness is called, who is an apprentice of Brunt: he says, "I remember a person taking the back room two pair of stairs, in Fox-court, Gray's-inn-lane; that person was Ings; Brunt and he looked at the room together. When they came out of the room, I heard Brunt say to Ings, it will do, go down, and give them a shilling. After that Ings used to come to the room; he left the key of the room always at Brunt's when he went out: every evening a number of visitors used to come to them, among them constantly were Thistlewood, Tidd, Bradburn, Edwards, Hall, Potter, Strange, Adams, and Davidson, the man of colour; and more used to come whose names I do not know:" he says, "I saw no furniture, they used to take chairs out of Brunt's room to sit on; they used to call Thistlewood sometimes *T.* and sometimes *Arthur*: when the door has been open, I have seen long poles like rough branches of trees; about twenty of them were in the room:" he says, "I have heard hammering and sawing. Brunt," he says, "was taken up on Thursday the 24th of February. On the Sunday morning before that, there was a meeting of a larger number than I had seen come before;" all those he before named were there; "after the meeting broke up, Strange remained in my master's room; there was a meeting on the Monday evening, and on

Tuesday several persons were in and out in the course of that day. On Wednesday, some came into the workshop,"—that would be the workshop of his master—"they had got some pistols, and were putting new flints into them; there were five or six pistols. One of the men said, there were people overlooking them, and Brunt told them to go into the back room. Strange and a man whom I did not know were putting in the flints,"—that is a circumstance mentioned to you by Adams, their beginning to put these flints in, and retiring into the back room.—"In the course of the afternoon, Thistlewood asked me for a piece of writing-paper, and took it into the back-room, after that my master came out, and ordered me to get six sheets of cartridge paper, and gave me six pence. I went and bought it, and gave it to my master, who took it into the back-room."—Adams tells you there was this conversation, and money was given in order to procure cartridge-paper for writing these bills upon.—He says, "this was between four and five o'clock in the afternoon; my master went away about six; a man went away with him who was a stranger. I handed a table from my mistress's room into the back-room on that day;"—which it seems had never been done before, and why that should be done on that day, except for the purpose of writing, is not disclosed;—"when my mistress was going to tea, we wanted the table; I knocked at the door of the back room to get it; a man of the name of Potter opened it, and gave it to me; by the opening of the door, I could see who were in the room: I saw four or five persons in the room: I saw Tidd after my master was gone: at between seven and eight o'clock Mrs. Brunt called him, and he came into her room; she took him to the cupboard, and shewed him a pike head and a sword, and asked him what she should do with them; he took them out of the room, and, I believe, into the back room. Tidd soon after went away, and left word that, if any body called soon, they were to make haste and follow to the White Hart public-house. Potter and some others came, and went on there. My master came home about nine o'clock the same night, his dress was dirty, and he seemed confused; he said to his wife, it is all up, and that where he had been a great many officers came in, that he had saved his life, and that was all." He says, "Just at this part of his conversation, another man came in, and shook hands with Brunt, and asked him if he knew who had informed; the man said, No: he said he had had a dreadful blow on the side, and was knocked down. Brunt said, there is something more to be done, and he and the man went out together." An observation has been made on that expression, "there is something more to be done yet," as if Brunt knew that this scheme of assassination was not the only thing to be done; you will judge whether that expression has that import. Then he says, "after they were gone, Mrs. Brunt and I went

into the back room, where was found one of the poles I had seen before, and in the cupboard were several rolls of brown paper with tar in them, some paper twisted up, and some things as big as my two fists, and strings rolled round them, and an iron pot that Brunt had had for some time before. At eleven o'clock my master again returned home; and said he should want me to get up as early in the morning as I could, to clean his boots; they were very dirty; he called me next morning at half past six, and asked me if I knew the Borough, which I did, but not Snow's-fields; then we went into the back room, where I took two baskets by his direction, and we put the things out of the cupboard into them; he told me they were going to Potter's in Snow's-fields; one of the baskets was tied in a blue apron, which had been put up as a curtain in that room that he called Ings's room:" then he says, "I went into Brunt's room to look for something to tie the other basket in, and two officers came up and took my master into custody; they searched the room and took the baskets. Tidd lived in Hole-in-the-wall Passage, Brook's-market, and Adams next door to him. I have been at the lodgings of both."

On cross-examination, he says "Brunt was a journeyman shoemaker, but not in very poor circumstances, he had one child; Tidd was a shoemaker living near us, he has a wife, and I believe children; I don't know if he is a poor man; Adams is a shoemaker also; Ings had the lodgings nearly five weeks. I believe there were meetings every night during that time, the greatest number I remember was on the Sunday morning: about twenty men were there then. I know some of the people I have named; Strange is a bootmaker's shopman; Edwards, who was there very often, is a modeller, he was there oftener than Adams; Hall is a journeyman tailor, and the whole were of that rank in life; the baskets spoken of were rush baskets, and the materials filled them; there were about twenty branches of trees in a green raw state; I don't know how they came there, there was but one left on the Wednesday morning; there used to be a fire in the room, I do not know if they burnt the poles, but there was one left." This witness, you see, proves beyond all question that this room was taken by Brunt for Ings, and that it was frequented in the evenings and on some mornings by the persons Adams spoke of, and there were hand-grenades, pikes, and fire-arms seen by him.

The next witness is Thomas Smart, who is a watchman in the parish of Saint George, Hanover-square. He says, he was on the watch on the south side of Grosvenor-square, the 22nd of February last, his box nearly facing lord Harrowby's; he went on at eight o'clock; soon after he went on he saw four suspicious-looking men walking about the square, two tall, and two short, one was a black man, or nearly so, "it was after I called half-past eight; I took particular notice of them, they

were looking down the areas, and taking notice of the areas." This was intended to confirm what Adams said, that Davidson was on the watch that night. Henry Gillan says, he was at a public-house in Charles-street, Grosvenor-square, at the corner of the Mews, on Tuesday, the 22nd of February; he says, "I saw the short man with a brown coat (*Brunt*); there was a tall man along with him, they had bread and cheese and porter; we played at dominos. I went away before ten and left them there:" that is another circumstance to confirm what Adams said, that he and Brunt went that evening on the watch, and that they were at this house where they had bread and cheese, and Brunt played at dominos.

Then John Hector Morison is examined, who is a journeyman cutler to Mr. Underwood in Drury-lane, he recollects a sword being brought to him on Christmas Eve by a man dressed like a butcher (*he points out Ings to be the man*), he had the sword under his smock frock without a scabbard; he desired to have it well ground with a fine point, he said his name was Eames, or Ings, the sword was ground and he took it away in two or three days: a few days after, he brought another for the same purpose, it was a particularly long one; one of the swords afterwards seized, at or near Cato-street, is afterwards identified by him.

Edward Simpson is called, who is corporal-major of the second regiment of life-guards, and knew the prisoner Harrison, who was discharged out of that corps about six years ago. "Harrison knew the King-street barracks, five windows of which looked into Gloucester Mews, but they were stopped up a few days after the affair in Cato-street." That is only to shew that Harrison, the person who was afterwards to proceed to the barracks to throw the fire balls in, might reasonably be selected for that purpose, as having been stationed there.

John Aldous is called. He says he "is a pawnbroker in Berwick-street; he knows the prisoner Davidson from having pledged things at his shop; on the 23rd of February he came there, and took a brass-barrelled blunderbuss out of pawn."

Then my lord Harrowby was called; who tells you that Hiden did come to him in the Park, and did deliver to him a letter directed to lord Castlereagh; that he afterwards appointed to meet him in Hyde-park, and did meet him there. He says, that he himself is one of his majesty's privy council, and is the president of the council; and he did intend to give a cabinet dinner on the 23rd of February. At the cabinet dinners no persons but those who compose what is called the cabinet are invited; the cabinet consisting of the principal officers of state. The invitations were sent out in the latter end of the preceding week. Then he gives you the names of the persons who compose the cabinet, and who were invited upon that occasion; namely, my lord Chan-

cellor; the earl of Liverpool, first lord of the Treasury; Mr. Vansittart, chancellor of the Exchequer; the earl of Bathurst, secretary of State for the Colonial Department; lord Castlereagh, secretary of State for the Foreign Department; lord Sidmouth, secretary of State for the Home Department; the earl of Westmoreland, lord Privy Seal; lord Melville, first lord of the Admiralty; the duke of Wellington, master general of the Ordnance; Mr. Canning, first commissioner of the India Board; Mr. Robinson, president of the Board of Trade; Mr. Bathurst, chancellor of the duchy of Lancaster; Mr. Wellesley Pole, master of the Mint; and the earl of Mulgrave; all of whom, he says, are privy councillors, and persons employed in the most important offices in the administration of the executive government. He says, they are in common parlance called his majesty's ministers. He says, "On the Tuesday before the Wednesday of the intended dinner, I was riding in the Park, about two o'clock, preparatory to my attending a council at Carlton palace. I had no servant with me. A person addressed me near Grosvenor-gate, and said he had a letter addressed to lord Castlereagh, which he was desirous to convey to him: it was of considerable importance, and concerned both that noble lord and myself. The letter produced is the letter. The man (who was the last witness), at my desire gave me his address on this card," which his lordship produced. "He met me by appointment on Wednesday morning in the ring amongst the young plantations in Hyde-park. After this was communicated to me, I did not inform my servants that the dinner was not to take place, but I directed that the preparations should go on as if the dinner was to take place, until I wrote a note from the earl of Liverpool's, to my head servant, to say, that the cabinet would not dine there, but that the preparation should be going on as if it was intended they should; the party would have assembled if the dinner had taken place, between seven and half-past seven." He says further, that he had some previous general knowledge, and had some reason to expect, for some time past, that there was some intention of this kind, he does not know, nor has ever seen Edwards, upon whom so much observation has been made.

Then John Baker, the butler, is called; he merely remembers a cabinet dinner being intended to be had at lord Harrowby's house on the 23rd of February last; the cabinet dinners had been suspended for some time. Cards of invitation were issued to the ministers on the 18th or 19th, that is, the Friday or the Saturday; he says preparations were made for dinner on the Wednesday, as usual, and he did not receive the intimation that his majesty's ministers would not dine there that day, until eight or ten minutes after eight o'clock. Then he mentions a circumstance which serves to account for what has been said, that they supposed the company had arrived, for he

says the archbishop of York lives near to lord Harrowby, and there were carriages at his grace's door about six or seven o'clock: so that persons who were watching at a distance might suppose that these carriages were stopping at lord Harrowby's; perhaps you may think that may satisfactorily account for what was said at Cato-street, that some of the ministers were come.

Thomas Monument says, that he is the brother of the witness, John Monument, and he confirms his brother as far as his knowledge extends. He says, that Thistlewood called upon his brother; he brought Brunt with him; after they had come into the room they staid five or ten minutes, when they went out together and remained about two or three minutes, and then returned: Thistlewood and Brunt went away again. He says, "on the Tuesday before this affair, Tidd and Brunt called on my brother; my brother said, why Brunt I thought I had lost you, as it is so long since I saw you. Brunt said that the king's death had made a little alteration in their plans; my brother asked what those plans were, and Brunt said they had different objects in view. Brunt then asked my brother to meet him at Tyburn-turnpike on the next evening; my brother agreed; Brunt said to Tidd, suppose we give them an outline of the plan. Tidd made no answer. Brunt then told us to be at Tyburn-turnpike at six o'clock on the Wednesday evening; they gave us the pass-word—*b, u, t*,—and if any of their party were there they would answer *t, o, n*. I did not promise to go; they did not press me to go, and I did not go. Brunt called about five for my brother, but we were busy, and my brother could not go at that time. Brunt then told him to call upon Tidd, who lives in the Hole-in-the-wall passage, I did not see my brother after."

This, gentlemen, is the evidence that has been laid before you, as confirmatory of the account given you by the witnesses, Adams, Hiden, Monument, and Dwyer: many of the facts sworn by Adams are sworn to by others; the communications made as to the treasonable purpose are such as no person not engaged in it could be likely to be acquainted with.

Then they proceed to call some persons who prove Harrison was seen at this building at Cato-street, that he said he had taken it, and was going to clear it out and obtained some candles; and then they call the several police officers and an officer in the army, lieutenant Fitzclarence, to give an account of the arrest and apprehension of several of the persons there assembled, and the seizures there made of arms and other things.

It does not appear, to me, necessary to go through, in detail, the testimony of these witnesses, because it is not material for you to consider by what particular individual a pistol was presented: it is important to observe that when the officers came to this place to apprehend the persons, many of them made a most desperate resistance; that is a circumstance

deserving your consideration; but a minute detail of what this or that individual did, does not appear necessary to be given to you now, though it was necessary it should be laid before you in the first instance, by the examination of the witnesses. You find them in a stable: a man was seen on the spot, from whom a sword was taken, and a butcher's knife; that knife is the knife supposed to have been taken by Ings; it answers the description given of that knife. Wright was not able to secure Ings, and cannot say he was the person. It is further proved, however, that when Ings was apprehended, he was found to have a haversack slung to each shoulder, a belt buckled round him, and some cartridges, and a knife case. The circumstance of his having these two bags, is observed upon by the counsel for the prisoner, and it is suggested they are more fit for plunder than for such an abominable purpose as Adams described: it is not very material what purpose they were taken for, because he might not choose to say then that he meant to take the plate, and might say he took the bags for another purpose; but the fact of his having the bags is worthy of your attention as confirming Adams.

You next have the account, by Taunton, of the apprehension of Brunt at his lodgings, and of the contents of the two baskets that were found, and it is important for you to attend to that. Taunton says, "I found Brunt in a front room up two pair of stairs, I searched the room and found nothing material: in the back room I found two baskets, one tied up in an apron. Brunt was then in the front room; I asked him as to the baskets, and he said he knew nothing about them." He chooses, therefore, to give an untrue account in that respect, for it is clear, by the testimony of the apprentice, that he did know about them, "he said the room did not belong to him: there was a pike staff in the room, and an iron pot with marks of tar at the bottom of it. When I found he denied the apartments I sent for the landlady, Mrs. Rogers, and asked her who those apartments belonged to? She said, that her niece, Eleanor Walker, had let them to a man she did not know, in the presence of Brunt. I asked Brunt who this man was; he said he had met him in a public house, what his name was he did not know. From this place I went to Tidd's in Hole-in-the-wall passage, near Gray's-inn-lane, where I found a very large box full of ball cartridges, 965, and a great quantity of gunpowder, and in a haversack there were 434 balls, 171 ball cartridges, and 69 ball cartridges without powder, with a ball in each cartridge, about three pounds of gunpowder in a paper, a coarse canvas bag with ten hand-grenades, and eleven flannel bags of powder, one pound each, ten flannel bags empty, a small bag with a powder flask and sixty-eight balls, four flints and twenty-seven pike handles." These are the things found at Tidd's, which Adams tells you was the depot. Then the baskets found

at Brunt's, Taunton says, contained nine papers with rope yarn and tar, and some steel filings, four grenades, three papers with rope yarn and tar, two flannel bags of powder, one pound each, one paper with some powder in it, one leather bag with sixty-three balls in it.

On cross-examination, he says "I found all these things on the 24th of February: Brunt was present when I found them. I went to Tidd's about half-past eight o'clock in the morning." Then another officer is called, and the several things found in Cato-street, and upon the persons who were apprehended there, are produced before you. You saw them, a considerable number of large hand-grenades, several pike-heads, carbines, muskets, pistols, blunderbusses, sticks, and many other things which I need not enumerate.

Then Morison is called, who says "this is the first sword I sharpened for Ings, I know it by a mark on the blade."

Then Edward Hanson, a Serjeant in the Royal Artillery, was called, who took to pieces one of those things, which they call hand-grenades, and explained to you its nature and effect, and described it, as it undoubtedly is, as a very destructive instrument. This one had twelve pieces of iron in different parts of it, it was intended this should burst, and its contents fly about in all directions, to the great annoyance and probable destruction of the persons near.

This closed the evidence on the part of the Crown.

On the part of the prisoner, they called Mary Barker, a daughter of Tidd, to whom no questions were put in cross-examination, from a very commendable delicacy, as it appeared to me, on account of her near relationship to one of the prisoners; but you will judge whether her testimony does not confirm that of the witnesses for the Crown. She says, on the 24th of February, the police officers came to her father's, and found a box and other things; it was about half-past eight in the morning; they took away some pike-staves; they had been brought that morning; but she does not know by whom; whether she was present to see them or not, she does not recollect.—"I know Adams, I had seen him at my father's before; I know Edwards, I had seen him there often. The things were brought that morning. I had seen similar things there before that time; I should have judged them to be the same. Edwards had taken a part of them away; I do not know who took the rest: Edwards took part away on Wednesday; my father took none away. Edwards did not take any box: the box was brought a day or two before my father was taken." There was a box which you will recollect Taunton proved he found there, containing this great quantity of cartridges, powder, and things of that kind: she says, "I do not know who brought the box." According, therefore, to the testimony of this young woman, this box had been at that house some days before the night

when they were apprehended, and things similar to those lying before her, she had seen at a former time at that house; that certainly seems rather to confirm than contradict the testimony of the witnesses for the Crown.

Then, by way of beating down the credit of the witness Dwyer, they call a person named Edward Huckleston; he says he has known Dwyer for some years intimately, and he says, "I do not think he is fit to be believed on his oath." Upon his cross-examination, he says, "I have seen him have money, and, knowing that he was but a bricklayer, and had little or no work, I was surprised. I was in distress; he told me he would put me in the way to make plenty of money if I would go with him. I agreed; and he proposed that we should charge some gentleman with an unnatural offence; that he was to go up first, and then that I was to join him. I left him, quite shocked at the idea. This was about three months ago. He said he had got 70*l*. at a time from one gentleman in St. James's-street, by only catching him by the collar, and accusing him. I met him next night at the Rodney's-head, and he called me a coward. I told him of the danger, and reminded him that his brother had been transported for the same thing. He said his brother did not know so well how to manage as he did:" he says, "from that time I have avoided him. I am a shoemaker, but am now articulated to a cow-doctor, in Newman-mews. I first communicated this to my brother about a week ago. I did not mention it before, lest I might be ill-treated, as I had to go so much about among the cow-keepers. Some of the Irishmen have gone away now, and that induced me to summon up courage to mention it to my brother. When Dwyer made this proposal to me, it was two or three months ago; I did go part of the way with him, but when he told me, I was horror-struck, and got back as soon as I could."

Then Dwyer is called up again, who says that all Huckleston has said is untrue: he says,—"I have seen the man, but did not know his name was Huckleston. I have met him in Oxford-road, not in a public-house. I never proposed to him to charge any person with an unnatural offence. In February last, I worked in the parish mill, at Mary-le-bone, and got three shillings a day: I worked there twice in different weeks; I have a wife and children."

On his cross-examination, he says, he did not recognize the last witness on his coming into Court, and say, "Oh, Huckleston;" and it seems that that was a mistake on the part of the learned counsel who examined him; he says, "I did not know his name at all. I have seen him very often; he resorted to the end of James-street, and I lived in Gee's-court. I never went to a public-house with him. I resorted to the Rodney's-head; if I have seen him at the Rodney's-head, it must be some time ago. I have not repeatedly met him in a public-house. I don't know that I can swear I never saw him at a public-house. I will

swear I have not been with him at the Rodney's-head within these three months. I am a bricklayer by trade. I have worked for a Mr. Smith who lives at No. 22, Mortimer-street, Cavendish-square, for thirteen years." You have, therefore, this witness Huckleston called, you see, to represent to you that Dwyer is not a man entitled to your credit; all that is said by him is contradicted: which of them tells the truth it is for you to say. You are not merely to reject the testimony of one person because another comes forward and says something derogatory of him. You are to consider which of the two is the person most entitled to your credit. Dwyer, if he has told us the truth, did make a communication. Huckleston admits, though this abominable scheme was communicated to him, he never went to a magistrate; but then, he says he was apprehensive of being ill-treated, because there were many Irish in the neighbourhood.

On the part of the prisoner, they next called Joseph Doane, who says he is called court reporter; he communicates to six newspapers what passes at the court properly so called, which he picks up from time to time as he can. He is shewn the New Times of the 22nd of February, containing an announcement of this dinner; he says he cannot speak to whether he wrote that at this distance of time, but from the wording of it, he rather thinks he did not prepare the notice of that cabinet dinner, because it contains the word "grand," which he would not have put in, as he knows the cabinet dinners are always the same.

Then they call Andrew Mitchell, the printer of the New Times; he produces the manuscript of that article; he says, it did not come from Mr. Doane. "I received it from Mr. Lavenue, and this was the manuscript that was used upon this occasion."

John Whitaker, who has searched several papers, says that the New Times is the only paper which contained an account of the dinner to be given at lord Harrowby's, and that was in a paper of the 22nd February. How that announcement or advertisement or whatever it may be, found its way into the newspaper, we do not know, and it would be in vain, perhaps, in this, as in many other cases, to endeavour to discover by what accident or means a matter of this nature finds its way into a newspaper. What inference is to be drawn from this testimony you must judge for yourselves. I confess it does not, in my mind, lead to any satisfactory conclusion one way or the other. The dinner undoubtedly was intended; that is stated by lord Harrowby and his servant; whether any body had heard of that dinner, and so thought fit to add it to other articles of the same description, or how it got into the paper, we do not know.

This is the whole of the evidence that has been laid before you, on the part of the defendant. There are no witnesses called to impeach Adams, Monument, or Hiden. The impeachment of Adams and Monument must

rest therefore on the part they acknowledge themselves to have taken in this transaction; and it is for you to judge whether their statement is true. If you are to believe one of these persons, you will consider whether it does not necessarily follow that what the others have told you is substantiated, because Hiden's account, though more cautious, is to the same import and effect as the others. You have had exhibited here before you upon the table, and proved to have been found, a quantity of arms, and other things to the extent that has been mentioned. It seems almost to be conceded, upon the evidence that has been laid before you, that the conspiracy to assassinate the king's ministers at that dinner was so substantiated by proof, that it could not be expected you should withhold your credit from it. If you are to believe that there was that wicked scheme and project intended, you will further consider whether it is reasonable to suppose that that was all that was intended; you will consider what the probability is. These persons are many of them unconnected, in most respects, with each other, certainly unconnected with the persons who conduct the affairs of his majesty's government; therefore you will consider whether it is not more natural to suppose that those who meditated this assassination, meditated it as part of a plan of a general simultaneous insurrection, which they hoped would result from it, than to suppose that they meditated this and this alone—whether it was intended to gratify their thirst for human blood, or whether it was a part of an ulterior plan. Upon that question it is fit you should attend to the great quantity, as well as to the nature of the weapons, and instruments of destruction which have been produced before you, which certainly are more in number than could be required or used for the purpose merely of that abominable visit and attempt that was to be made in the house of lord Harrowby. The hand-grenades are of a description to be used there: the fire balls do not seem at all applicable. When you find all these materials collected together in the custody of some of these persons, some at one place, and some at another, you will take the whole into your serious consideration. If, upon the whole of this evidence, you shall feel satisfied that a conspiracy to levy war against his majesty, or to depose him, is made out by the evidence laid before you—if your consciences are satisfied of that, you will discharge the painful duty imposed upon you by pronouncing the prisoner guilty. If, upon a due examination of all the circumstances, attending to the observations of the very eloquent counsel who have addressed you on the part of the prisoners, your minds shall not be satisfied that they did entertain this criminal project which has been mentioned to you, you then will discharge a more pleasant duty, and acquit the prisoner. You will consider the case, and, I have no doubt, your verdict will do justice between the public and the prisoner.

Foreman of the Jury.—My lord, can we have a copy of the indictment?

Lord Chief Justice Abbott.—Certainly. [It was handed to the Jury].

The Jury withdrew at a quarter before five, and in five minutes returned into court to request a copy of the act of parliament of the 36th Geo. 3rd.

Lord Chief Justice Abbott.—Gentlemen, the act of parliament shall be put into your hands as you desire, but before I do so it is fit I should mention to you, that by its terms it is made to continue during the natural life of our late most gracious sovereign, and until the end of the next session of parliament after a demise of the Crown; it had not, therefore, expired before the present indictment, but by a later act* it is made perpetual. I need not give you that, because this had not expired.

A Jurymen.—If your lordship will read it, it will be sufficient.

Lord Chief Justice Abbott.—Certainly. The act begins by reciting—“We, your majesty's dutiful and loyal subjects, the lords spiritual and temporal, and commons of Great Britain, in this present parliament assembled, duly considering the daring outrages offered to your majesty's most sacred person, in your passage to and from your parliament at the opening of this present session; and also the continued attempts of evil and wicked disposed persons to disturb the tranquillity of this your majesty's kingdom, particularly by the multitude of seditious pamphlets and speeches daily printed, published, and dispersed, with unremitted industry, and with a transcendent boldness, in contempt of your majesty's royal person and dignity, and tending to the overthrow of the laws, government, and happy constitution of these realms, have judged that it is become necessary to provide a further remedy against all such treasonable and seditious practices and attempts. We, therefore, calling to mind the good and wholesome provisions which have at different times been made, by the wisdom of parliament, for the averting such dangers, and more especially for the security and preservation of the persons of the sovereigns of these realms, do most humbly beseech your majesty that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that if any person or persons whatsoever, after the day of the passing of this act, during the natural life of our most gracious sovereign lord the king (whom Almighty God preserve and bless with a long and prosperous reign) and until the end of the next session of parliament, after a demise of the Crown, shall, within the realm or without, compass, imagine, invent, devise,

* Stat. 57 Geo. 3rd c. 6.

or intend death or destruction, or any bodily harm tending to death or destruction, maim, or wounding, imprisonment or restraint of the person of the same, our sovereign lord the king, his heirs and successors—" Now, gentlemen, comes the part which forms the subject of one of the counts of the indictment: "—or to depose him or them from the style, honour, or kingly name of the imperial Crown of this realm, or of any other of his majesty's dominions or countries, or to levy war against his majesty, his heirs or successors, within this realm, in order, by force or constraint, to compel him or them to change his or their measures or counsels," which is another, "or in order to put any force or constraint upon, or to intimidate or overawe both houses, or either house of parliament, or to remove or stir any foreigner or stranger, with force, to invade this realm, or any other of his majesty's dominions or countries, under the obedience of his majesty, his heirs and successors; and such compassings, imaginations, inventions, devices or intentions, or any of them shall express, utter, or declare, by publishing any printing or writing, or by any overt act or deed, being legally convicted thereof, upon the oaths of two lawful and credible witnesses upon trial, or otherwise convicted or attainted by due course of law; then every such person and persons, so as aforesaid offending, shall be deemed declared and adjudged to be a traitor, and traitors, and shall suffer pains of death, and also loss and forfeit, as in cases of high treason."

If you require any further explanation I will give it to you; but it seemed, I thought, to be taken for granted by the counsel on one side and the other, that the project, if proved, was a treasonable conspiracy to depose the king, or to levy war against the king. If they had succeeded so far as to establish a provisional government, the royal functions would have ceased. Any attempt by numbers, and by force, to compel his majesty to alter his measures and counsels, is most undoubtedly a levying of war within this act. An actual

rising or insurrection for the redress of any supposed public grievance was always considered as an actual levying of war, under the old statute of Edward the 3rd.

The Jury again retired, and in a quarter of an hour returned into court, finding the prisoner GUILTY on the third and fourth counts.

Clerk of Arraignment.—Shall I call the prisoner for judgment, my lord?

Lord Chief Justice Abbott.—No, not now.

Mr. Attorney General.—It will be necessary that the jury should be summoned for Friday morning, as I fear there may have been some misunderstanding.

Lord Chief Justice Abbott.—Send notice to the jury to attend again on Friday morning: the officer shall go round as far as he can.

Foreman of the Jury.—Will your lordship have the goodness to discharge us from attending the ensuing trials?

Lord Chief Justice Abbott.—On consulting with the other judges, we are of opinion, you may be excused from serving on the next trial; we cannot say your attendance shall be excused on future trials.

A Jurymen (Mr. Goodchild).—We have had a very arduous duty to perform, and we shall hardly have time to recover ourselves.

Lord Chief Justice Abbott.—We hope something more will be done for you; but you will not be wanted before next Monday, at all events: further than that I cannot say.

Mr. Goodchild.—We do not press it further than that, my lord.

Mr. Justice Richardson.—Let it be announced that these trials will be resumed on Friday morning.*

* See the following Cases,

703. The whole Proceedings on the Trial of JAMES INGS, for High Treason, before the Court holden under a Special Commission, for the Trial of certain Offences therein mentioned, on the 21st and 22nd days of April: 1 GEO. IV. A. D. 1820.*

SESSIONS HOUSE, OLD BAILEY,

FRIDAY, APRIL 21st, 1820.

Present

The Right Hon. Lord Chief Justice Dallas.

The Right Hon. Lord Chief Baron [Richards].

The Hon. Mr. Justice Richardson.

The Common Sergeant.

And others his Majesty's Justices, &c.

JAMES INGS was set to the bar; and John Thomas Brunt, Richard Tidd, William Davidson, James William Wilson, John Harrison, Richard Bradburn, John Shaw Strange, James Gilchrist, and Charles Cooper, were placed at the bar behind.

The Jury panel was called over, commencing with No. 108.

Charles Farmer, hardwareman, sworn.

Christopher Denton, ship-builder, challenged by the prisoner.

William James Farmer, baker, challenged by the prisoner.

David Newman, farmer, challenged by the Crown.

George Smith, japanner, sworn.

George Thorp, clockcase-maker, challenged by the Crown.

Henry Seaborn, cooper, excused on account of illness.

Francis Sherborn, esq. and farmer, challenged by the prisoner.

Edward Simpson, shipwright, challenged by the prisoner.

William Davies, shopkeeper challenged by the Crown.

Richard Franks, esq. and silk-mercer, challenged by the prisoner.

Thomas Langley, ship-chandler, challenged by the Crown.

George Priest, esq. challenged by the prisoner.

Samuel Wilson, gentleman and merchant, challenged by the prisoner.

William Moore, bricklayer, sworn.

Michael Atkins, esq. challenged by the Crown.

James Ede, farmer, sworn.

Alfred Bason, esq. and porter-dealer, challenged by the Crown.

George Taylor, bricklayer, challenged by the prisoner.

John Woodward, gentleman, challenged by the prisoner.

* See the preceding and following Cases.

Edward Chenill, jeweller, challenged by the prisoner.

John Magne, gentleman, challenged by the prisoner.

David Pain, esq. challenged by the prisoner.

Richard Tucker, cheesemonger, challenged by the prisoner.

Thomas Beachamp, farmer, sworn.

Robert Ceeley, rigger, challenged by the prisoner.

Thomas Fagg, esq. and coachmaster, challenged by the Crown.

Matthew Belcher, vintner, challenged by the Crown.

Benjamin Watson, gentleman, challenged by the prisoner.

George Burrows, silversmith, fined for non-attendance, fine afterwards remitted on his appearance, and swearing he had been prevented being in time by indisposition.

Edward Ellis, gentleman and stock-broker, challenged by the prisoner.

Benjamin Blyth, organ-builder, sworn.

William Clave, feather-dresser, challenged by the prisoner.

John Jackson, glass-cutter, challenged by the prisoner.

John Beck, gentleman and seedman, sworn.

Edwin Booth, esq. and distiller, challenged by the prisoner.

Charles Benham, market-gardener, challenged by the Crown.

Thomas Robins, silversmith, challenged by the Crown.

John Ray, gentleman, excused on account of the indisposition of a child in a dangerous state.

Francis Dorvill, esq. challenged by the prisoner.

William Percy, plasterer, sworn.

John George Hobden, face-cutter, challenged by the prisoner.

Archibald Ritchey, stone-mason, challenged by the Crown.

John King, gentleman, challenged by the Crown.

Charles Allen Fremott, esq. challenged by the prisoner.

Benjamin Rogers, farmer, sworn.

Richard Laycock, esq. and cow-keeper, fined for non-attendance.

George Fox, sawyer, challenged by the Crown.

William Acock, plumber, challenged by the Crown.

Edward Guel, carpenter, challenged by the Crown.

George Golding, surveyor, challenged by the prisoner.

Robert Roberts, oilman, challenged by the Crown.

William Bousd, founder, challenged by the Crown.

Charles Page, esq. and merchant, challenged by the prisoner.

William Cole, farmer, challenged by the prisoner.

John Lewis, watchmaker, challenged by the Crown.

Edward Flower, esq. schoolmaster, challenged by the prisoner.

John Bala, gentleman and tallow-chandler, challenged by the Crown.

John Young, gentleman and scalemaker, sworn.

Stafford Price, gentleman, and currier, challenged by the prisoner.

James Cary, joiner, sworn.

William Edgcombe, joiner, sworn.

THE JURY.

Charles Farmer,
George Smith,
William Moore,
James Ede,
Thomas Beachamp,
Benjamin Blyth,

John Beck,
William Percy,
Benjamin Rogers,
John Young,
James Cary,
William Edgcomb.

The Jury were charged with the prisoner in the usual form.

THE Indictment was opened by *Mr. Bolland*.

Mr. Solicitor General.—Gentlemen of the jury;—It is my duty to state this case on the part of the prosecution, and I am sure, knowing whom I now have the honour of addressing, that it is unnecessary for me to request your serious and patient attention to the particulars which I am about to detail; you must feel that you owe it to yourselves; you must feel that you owe it to the public justice of the country; you must feel in a particular manner that you owe it to the prisoner himself who now stands before you for his deliverance.

Gentlemen, there is a circumstance to which in justice to the prisoner, it is my duty to advert. I should not have alluded to it if it must not of necessity have already come to your knowledge—I mean the conviction that has already taken place. I entreat and conjure you that you will not suffer that conviction at all to operate upon your minds, to the prejudice of the prisoner who now stands before you. You are to decide upon this case according to the impression which the evidence shall make upon your own minds; and you are not to be influenced by an impression which evidence that has already been heard may have made upon the minds of other men. You are to come to the consideration of this question totally divested of all previous prejudices and impressions, and you are to decide this case impartially, according to the evidence as it shall be given upon oath before you against the prisoner at the bar.

With respect to the law, as applicable to this subject, it will not be necessary for me to trouble you with a single observation. No doubt can be entertained upon it. No question has hitherto been raised in the course of these inquiries with respect to the law. The charge against the prisoner at the bar, divested of every thing that is technical, is shortly and simply this; that he has conspired with other men, whose names will be mentioned in the course of these proceedings, to overturn by force and violence the laws and constitution of the country. This, though stated in technical language upon the record, is the substance of the charge against the prisoner at the bar. The object at which the parties aimed was to be effected by means of an extensive plan of assassination; it was to be effected also by other means to which I shall presently have occasion to direct your attention.

In this stage of the prosecution, all that I have to do is, in a plain and simple manner, carefully abstaining from all exaggeration, to state to you the facts that will be detailed in evidence in support of this charge. I shall state them as I now know they will be proved, without distorting a single fact or circumstance to the prejudice of the prisoner at the bar. We are all interested in the fair and impartial administration of justice; no motives arising out of any particular circumstances can possibly operate upon the mind of a person standing in the situation in which I am now placed to lead him to forget his duty. The fair, impartial, and upright administration of justice is that upon which we justly pride ourselves; it is the best gift we enjoy under the laws and constitution of our country.

The prisoner at the bar, with a person of the name of Thistlewood, a person of the name of Davidson, another of the name of Brunt, a person of the name of Wilson, and several others who will be mentioned in the course of this inquiry, held, in the early part of the year, secret meetings and consultations at a place known by the name or sign of the White Hart, in Brook's-market. Those consultations were held in a back room in a yard belonging to that public-house. I shall not trouble you by stating what took place at those meetings, because, after they had been held in that place for a short period of time, for some reason to which it is unnecessary that I should direct your attention, they left that place, and held their meetings in another situation to which I am now about to advert.

One of the prisoners, a man of the name of Brunt, who is a shoemaker by trade, lived in a place called Fox-court, in Gray's-inn-lane; he occupied two apartments in the front of the house; there was in the back of the house, upon the same floor, another unfurnished room, and that room was hired for the purpose of continuing those meetings which had been formerly held at the White Hart. The prisoner at the bar and Brunt, in conjunction, hired the apartment. This took place about

the middle of the month of January, and from that period to Wednesday the 23rd of February, to which your attention will often be called in the course of this inquiry, those meetings were held always once, and frequently twice a day, by the persons whom I have mentioned, all of them, except Thistlewood, being in humble situations of life, journeymen mechanics—Thistlewood himself was in a more elevated situation, having formerly, I believe, held a commission in his majesty's service. The object of those meetings was, to form a plan for overturning the government of the country; and the plan which was formed, which will be proved to you in the most distinct manner by the evidence I shall lay before you, was of this nature. In the first place it was proposed, that when an opportunity offered, all his majesty's ministers, being assembled at a cabinet dinner, which is usually held about once a week during the meeting of parliament, should be assassinated. It was proposed that arms should be provided for that purpose, which I will by and by describe. About thirty or forty persons were considered as sufficient for the accomplishment of this object, and it was arranged that on knocking at the door, under pretence of delivering a letter, a party armed with swords, pistols, and hand-grenades, should rush into the room where those persons were assembled at dinner, and that they should be all destroyed. Another party was to watch the stair-case, to prevent any assistance from the servants; a third, the area, and other persons were to take care that no interruption should occur to the execution of this project from persons without. This was a part of the general plan. It was thought the blow would create such an impression, in striking off all the first authorities in the country, that it would afford an opportunity for carrying into complete effect the other projects of the conspirators. One of these projects was, to set fire to various parts of the town, and a party to be headed by a person of the name of Palin (who was one of the association) was to execute that project. Another project was, to take possession of some pieces of cannon stationed in the Artillery-ground. The party to carry into effect that part of the plan was to be headed by a person of the name of Cook. A fourth party was to take possession of two pieces of artillery stationed in Gray's-inn-lane,

It is necessary for me to inform you that all the persons whose assistance was to be collected on this occasion were not to be let into the whole history and contrivance of this plot. The secret was confined to those who were in the habit of assembling in Fox-court; but they had associates without, who understood that a plan was going on; that something was in preparation to which they were to lend their assistance, when it was ripe for execution, and that when ripe for execution, the particulars were to be communicated to them.

For the purpose of carrying this into execu-

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tion, arms of various description were procured. It is unnecessary for me to particularize the whole of them, but I shall direct your attention to one or two descriptions of weapons. Independently of swords and pistols and a great number of pikes, there were, collected, for this purpose, a number of hand-grenades. These were collected chiefly by the prisoner Davidson: they were formed, each of them, of a tin box filled with about a quarter of a pound of gunpowder; a fuse communicated with the interior; large pieces of iron were placed round the box, and the whole was secured with cord, and afterwards dipped into pitch and tar, and cemented strongly together. Those grenades were intended, in the first instance, to be thrown into the house where the ministers were assembled at dinner: and they were also to be made use of for the purpose of aiding in the further projects which the parties had in view. Another description of instrument, prepared for the occasion, were fire-balls, which were called by them illumination-balls, to be made use of by the party, under the direction of Palin, in setting fire to different buildings in the metropolis. These preparations went on for a considerable period of time. As the instruments of destruction which I have thus described were successively prepared, they were brought to the place in Fox-court for inspection, and they were afterwards transferred from that place to what was called the dépôt, the lodgings of one of the conspirators, a man of the name of Tidd, who lived in a place called Hole-in-the-wall-passage, near Brook's-market.

The plan which had been thus formed, before it was completely matured and ready for execution, was suspended by the death of the king. In consequence of that event the cabinet dinners were discontinued, and it became therefore impossible to execute the project at the period when it was originally intended, and you will find these parties were continually expressing their disappointment at the delay. They became at last so impatient, that, on Saturday the 19th of February, they determined to consider whether some other plan, if not so effectual, at least to a degree effectual for the accomplishment of the purpose they had in view, might not be substituted for it; and accordingly they determined, that on the following day, Sunday, in the forenoon, a committee should be appointed for the purpose of considering what measures should be taken, it was then considered that there was no immediate prospect of all the ministers meeting together, so as to enable them to attempt the enterprise which had been contemplated. On the Sunday, they accordingly met together, and formed themselves into a committee; and Thistlewood, who undoubtedly was the leader and framer of the whole plan, proposed that as it was probable they might be able to collect about forty men for the purpose of executing what was denominated the west-end-job, forty determined persons calculated for

an enterprise of that kind should divide themselves into four parties, for the purpose of putting to death, at the same time, four of those who were considered the leading members of the cabinet. This plan was agitated, proposed, considered, and at last resolved upon. It was determined that all the rest of the project should be carried into effect, as it had been originally intended; but that instead of striking the blow at all his majesty's ministers, as circumstances did not permit that to be carried into effect, they would confine themselves with the means they possessed to the taking off four of the leading members of the cabinet, whose names will be mentioned to you in the course of the evidence. The prisoner at the bar expressed a hope that he should be of the party destined to put to death my lord Castlereagh, and he exclaimed, "It will not be necessary to draw lots for the purpose of knowing who shall be the individual to put him to death, for I am ready to do that with my own hand." After this resolution was adopted, the parties separated, and it was understood, that if on the following Wednesday (which was the day on which the cabinet dinners were usually given) there should be no opportunity of striking the great blow, then the plan should be carried into effect in the manner I have now stated. They met again on the Monday, and also on the Tuesday morning.

In the mean time the king's funeral had taken place, and as a proper interval had elapsed, it was considered that those dinners might again be renewed; and in the latter end of the preceding week, either on the Friday or on the Saturday, cards of invitation had been issued by the desire of lord Harrowby, requesting the attendance of the cabinet ministers at a dinner to be given at his house, on Wednesday the 23rd. You are aware that these dinners are usually announced in the public papers, and particularly in the papers which are supposed to be in the interest of Government. The court reporter sent the account of the invitation to the *New Times*, and it appeared in that paper on the morning of Tuesday the 22nd instant. These conspirators were assembled on that morning, at their place of rendezvous, in Fox-court. It was mentioned that a dinner was to be held on the following day, and that it was advertised in the newspapers. A newspaper was sent for, the paragraph was read, and the utmost exultation was expressed (in terms so gross that I do not choose to repeat them) by the prisoner now on his trial. Every thing was immediately in a bustle, and they determined to go round to their different associates, to get them in readiness, to carry into effect the enterprise on the following night.

I should state to you that they did not consider that the room in Fox-court would be a convenient spot, from whence to issue to the execution of their project. They were exposed there to a good deal of observation, and it was

at too remote a distance from the spot where the blow was to be struck. In order, therefore, to carry on their design with more facility, they had hired premises in an obscure street, called Cato-street, near the Edgware-road; a street through which there is no passage for carriages. Premises consisting of a small stable, a cart-house, a loft, and two rooms communicating with the loft, were hired for the purpose of carrying the plot into effect, from a person of the name of Firth, by Harrison, one of the parties most active in the conspiracy; and it was determined that on the following evening, about six or seven o'clock, armed in the manner necessary for accomplishing their object, they should assemble at these premises in Cato-street.

When this project was thus nearly ripe for execution, it was conceived that they might, with the less danger, communicate the particulars of it for the purpose of getting additional assistance; and accordingly a communication upon the subject was made by one of the conspirators, Wilson, to a person of the name of Hiden, a milkman, living in the neighbourhood of Manchester-square. Wilson told him that there was a design to overturn the government of the country: he told him that this was to be effected by means of assassinating his majesty's ministers, who were to dine on the following day at lord Harrowby's; and that there were parties who were to take possession of the artillery in Gray's-inn-lane, and in the city, and another party to set fire to the town, in different parts, for the purpose of producing general confusion and disorder; and as the labouring classes of the people were supposed to be disaffected to the government of the country, that it was hoped a general rising would take place, and that a force would be collected sufficient to set at defiance the remaining authorities of government.

When this communication was made to Hiden, he listened to it with astonishment; and when required to join in it, he immediately assented, because he felt that when such a proposition was made to him by persons capable of forming such a plan, if he should refuse his assent to it, his own personal security would be endangered. He promised, therefore, to meet the conspirators, said he would bring such accession of force as was in his power, and after this communication was made, returned to his own home. He then began to reflect seriously upon the nature of this diabolical project; he turned in his mind what course he should pursue, and he immediately sat down and wrote a letter to my lord Castlereagh, communicating the particulars of the plan. With this letter he proceeded to St. James's-square, afraid to knock at the door of my lord Castlereagh, lest he should be observed, but remaining in the neighbourhood for the purpose of seeing his lordship in the street, of delivering to him this letter, and of making the important disclosure. No opportunity of carrying this design into effect occurred, and he then

proceeded from St. James's-square to Grosvenor-square, where my lord Harrowby resides, for the purpose of endeavouring to make a communication to that nobleman. Fortunately my lord Harrowby went out to ride unaccompanied by a servant; Hiden stationed himself at Grosvenor-gate, and waited his return. This occurred about two o'clock on the Tuesday. He told his lordship that the letter contained information of a most important nature, and requested his lordship to take care that it should be instantly delivered to lord Castlereagh. Lord Harrowby asked whether he had given his name and address in the letter; he said he had not, but he immediately delivered a card to his lordship; and the moment this communication was made to government, of course every step was taken at the police offices for the purpose of counteracting the design, and securing the conspirators, when they should assemble the next night in Cato-street for the accomplishment of their object.

At about two o'clock on the following day, many of the parties assembled in Fox-court, for the purpose of finally equipping themselves for their enterprise, and, among others, the prisoner at the bar. Thistlewood came in, and seeing them thus engaged, used some words of encouragement, and said, "we must write a proclamation." Brunt, who lived in the front room, sent out his boy for some sheets of cartridge paper; six sheets were produced, and Thistlewood sat down and wrote three copies of a proclamation in these terms:—"Your tyrants are no more:—the friends of liberty are requested to come forward, as the provisional government is now sitting"—signed "J. Ings, secretary."—It was intended that these proclamations should be posted up in the neighbourhood of the places where the fires were lighted, that they might be seen by the persons there assembled, and might add to the general alarm; and, gentlemen, what would have been the state of the metropolis at that moment, supposing, at nearly the hour of midnight, it had been circulated through this extensive city, that every one of his majesty's ministers had been cut off by assassins; that the town was set on fire in different places; and, in addition to all this, that artillery was moving from different points towards the city; and that a provisional government consisting of unknown persons, and therefore, perhaps, the more terrific and alarming, was actually installed and substituted in lieu of the legitimate government of the empire;—what would have been the state of agitation, alarm, tumult, and disorder in the metropolis, if such an event had taken place?

After this the prisoner prepared himself for the purpose of proceeding to the place of rendezvous, with pistols in his belt, a sword, two bags or haversacks over his shoulders, and a butcher's knife (for he is by trade a butcher) which he produced to the party, with the handle wound round with wax end, which he

had so secured in order that he might have the firmer hold. He was resolved, he said, to take off the heads of two of the ministers who will be mentioned, and to expose them for the purpose of exciting the people to insurrection. Such was the language of the prisoner, miscalculating extremely the feelings of the people of this country, if he supposed they could be excited to insurrection by assassination and murder; for, if any thing were wanting to have deterred them from engaging in such an enterprise, it would be sufficient that it had been commenced by assassination—a crime foreign to the character of Englishmen, and which I hope and trust will ever remain alien to their feelings and habits.

After the prisoner had thus prepared himself, the conspirators by degrees went off for the purpose of assembling themselves in Cato-street. They met there at about six o'clock. When they arrived, their numbers amounted only to about twenty; fewer than they had calculated upon, for it was supposed that from thirty to forty was the number that would have assembled at that meeting. For some little time, there was a suspicion and a jealousy in the meeting, in consequence of the non-appearance of Tidd: they were surprised that he had not come, and became alarmed and agitated. But Brunt, who knew him well, stepped forward at this juncture, and said he would answer for Tidd that he would not forsake the cause. Shortly afterwards, Tidd, accompanied by a person of the name of Monument, whom we shall call as witness, entered the room. Still there were many of the persons present who, looking round, and calculating their force, and at the same time considering the object to which it was to be directed, felt that it was inadequate to the purpose. They betrayed symptoms of uneasiness and doubt. Thistlewood, who saw what was going on, and who was apprehensive lest the scheme should be abandoned, said they were too far advanced to recede; that if it was now given up, it would be another Despard's job; and begged them not to abandon the cause. Their numbers, he said, were abundantly sufficient: "we shall take them by surprise; though they may have many servants, they will be unarmed: we are now five and twenty, fourteen will be sufficient to enter the room, and the rest may guard the entrance." Brunt, who was always eager and zealous in the cause, then stepped forward, and said, "I presume those who betray alarm are not aware of the instruments we have prepared," and he then pointed to a grenade of very large construction, intended to be thrown into the room, and which would at once have effected the destruction of all the persons there assembled. Ings, the prisoner at the bar, also declared that if they did not proceed to the accomplishment of the object, he would either hang himself or cut his throat immediately. After this scene, it was put to the vote whether they should proceed, and they were unanimous in their

determination to go on with the enterprise. It was then fixed that fourteen should be selected for the purpose of entering the room, and those who were willing to engage in that part of the design, were desired to pass across the room, and to take a particular position. Immediately the prisoner at the bar and several others, in consequence of this notification, went to the spot assigned.

At this moment an alarm was given below—"look out above there," was shouted. Thistlewood immediately went to the ladder (for there was a communication only by a ladder with the stable below), and, looking down, he saw persons coming up with considerable activity. They were police officers, Ruthven at the head, Ellis second, a man of the name of Smithers third. When Ruthven mounted the ladder, he looked round the room, and saw the persons there assembled armed in the manner I have described, desperate in their appearance, a kind of bench crossing the room covered with arms of various descriptions—some of the parties endeavouring to retreat into a small adjoining room—Thistlewood seizing a sword and following them into this apartment. Ruthven made good his landing; he was followed by Ellis, and by Smithers, a man of great spirit, who immediately sprung forward. Thistlewood drew back his arm, and as Smithers approached him he plunged the sword into his heart. Smithers fell dead upon the spot. There was a cry—"put out the lights," and the lights were put out; and there was a cry—"kill the thieves, throw them down stairs;" upon this there was a general rush to the ladder, Thistlewood descended in the confusion, he discharged a pistol at an officer near the door, escaped, and was not then taken.

The prisoner was first seized in the stable below. The knife I have described was taken from his bosom, but in the confusion, in some way or other, as you will hear from the witnesses, he made his escape. He was pursued into a contiguous street—John-street; finding that he was not likely to escape from his pursuer, he turned round and fired a pistol at him—the ball grazed his neck. The prisoner still continued to run, but was stopped by the watchman. When he was brought back, he was asked his motive for firing, he said—"I know the upshot of it, I wish I had killed you. I know what I have done." He was then secured. Davidson, the black, who will be produced at the bar, was also apprehended in endeavouring to make his escape. He was taken to a public house; and, as a further proof of the object of this meeting, and of the projects which the parties had in view, you will find that he immediately began to swear that the man deserved to be damned who would not die in the cause of liberty. Brunt, one of the most active of the party, effected his escape. He returned to his own lodging about nine o'clock. His apprentice was there, whom we shall call as a witness. He came in jaded and dirty. He said to his wife—"it is

all over; we were attacked by a great number of officers. I have saved my life, that is all:"—however, recollecting himself, he went out shortly afterwards with another person, saying, "no, there is something to be done yet," referring, no doubt, to the other parts of the plan; namely, the setting fire to the town, seizing the cannon, and the other particulars which I have already stated. He returned in about two hours, and went to bed, first desiring his apprentice to clean his boots early in the morning; when he arose, he called his apprentice into the adjoining room, took out of a cupboard a number of hand-grenades, a number of bags filled with powder, so constructed as to serve for cartridges for the cannon, and a number of fire-balls. They were put into two baskets, one of them covered up with the apron of Brunt's wife, which had been used as a blind to the window of the room in which the parties had held their meeting. He desired his apprentice immediately to take the two baskets to a place called Snow's-fields, to the house of a person of the name of Potter—Potter being one of the conspirators who had been in the habit of meeting at Fox-court.

Just at this moment, Taunton, the Bow-street officer, ascended the stairs. He searched the room of Brunt, and found nothing; but going into the back room, he discovered the two baskets, prepared in the way I have described. Turning to Brunt, he asked him whose room that was,—he replied he did not know—a man whom he had met accidentally at a public house had taken it. He was asked to give an account of the baskets,—he said he knew nothing of them. Taunton then took him into custody, and proceeded immediately to Tidd's lodgings, which I have described as the dépôt, and there he found a trunk containing 965 rounds of ball-cartridge prepared for service; he found separate parcels of cartridges, amounting to between two and three hundred; he found several hand-grenades, and several cartridges prepared for cannon, and several fire-balls, showing that the project the parties contemplated was not confined to the assassination of his majesty's ministers, but had a more extensive range, and was of the character I have described.

I have now stated to you this case, as I know it will be proved in evidence. I have given you the whole history of the transaction, from its commencement in the middle of January, to its termination on the 23rd of February, when the prisoners were apprehended in Cato-street. You must of course be aware that in a case of this kind—a secret conspiracy carried on in the manner I have described—the minute details can only be proved by some of the conspirators themselves; I therefore must call before you, for that purpose, one or more accomplices. According to the law of England, and according to the law, I believe, of every country in the world, an accomplice, under such circumstances, is a witness competent to be heard in a court of justice: if it

were not so, the consequence must be most ruinous to the interests of society; for the great check upon combinations of this nature is, that the parties feel they cannot trust each other; that they are in the power of their associates, and that those very associates may be called to give evidence against them: put an end to this, and let it be laid down as law, or as a practical course to be pursued by juries, that accomplices, when they come forward as witnesses, are not to be considered as entitled to credit; and you offer an encouragement to secret and dark conspiracies of this kind, for you hold out complete indemnity and impunity.

But when I say that an accomplice is to be heard in a court of justice, do not understand me to say that his evidence is not to be watched with the utmost jealousy and caution. You will, in the first place, inquire what has been the previous character of the man, and if you find it to be untainted, this circumstance will add to the reliance you will be disposed to place upon his evidence.

You will in the second place ask yourselves what interest he has in perverting the truth. When an accomplice appears as a witness, in a court of justice, he may possibly be desirous of lessening his own guilt at the expense of those with whom he has associated; but he has no interest in stating that the crime which the parties combined to commit was of a different nature from what it really was: he has no interest in aggravating the character of the offence. Although no express promise has been made, he must know, from the course pursued on these occasions, that if he comes forward and states fairly and honestly all that he knows of the transaction, the vengeance of the law will not fall upon him. But this can be no motive to induce him to falsify the facts, and to represent the case as being of a more atrocious character than it really was; and I ask you, therefore, when I call the person to whom I am alluding before you, in examining his evidence, to put this question to yourselves:—what interest has this individual in misrepresenting the nature and character of the crime?

You will in the third place inquire, whether in the story he is telling, he is exposing himself to be contradicted if he tells that which is false. If he says that there were such and such persons present at the transactions he describes, you will see that he must know that those persons may be called for the purpose of giving evidence against him; you will inquire whether this must not of necessity be a guarantee of his truth, and prevent his stating that which is false; and you will then observe whether those particular witnesses are called on the other side, for the purpose of contradicting him.

You will in the fourth place inquire, whether he is confirmed in the story he is telling; which is the great principle to be applied in the administration of justice on occasions of this sort. When you inquire into the credit

due to an accomplice, is he confirmed in those parts of his story, where, from the circumstances of the transaction he can be confirmed—not in collateral and trivial particulars, which have no relation to the essence of the crime—but is he, in the main current of his story, confirmed in those particulars which from the nature of the case admit of confirmation. I beg you, after you shall have all the evidence laid before you, to apply those tests to the evidence of the accomplice, and say, whether or not you think him entitled to credit.

But this case does not depend upon the credit due to an accomplice; it may be necessary for the purpose of proving a particular fact, of making out some of the detail, to call an accomplice; but we have many other witnesses. I have told you of the communication made to Hiden, a man of unimpeached and unimpeachable character; a man who on the communication being made to him, instantly did that which every honest man would do, revealed it to the officers of government, that so foul and desperate a conspiracy might be defeated. But it does not depend even upon this evidence, for there are the facts themselves, which speak emphatically on the case. These parties were assembled: for what purpose were they assembled? for no ordinary purpose; the very arms and preparations negative such an inference. Is any assignable cause given or can be given, for this meeting, except that spoken to by the witnesses? Look at the nature of the arms that are prepared; they were not prepared solely for the purpose of executing this project of assassination, because you will find, that at the dépôt—at a distance from the place where the project of assassination was to be executed, and after all the preparations were complete for the purpose—there was found that quantity of arms and ammunition which I have mentioned; those illumination balls, as they were lightly called by the parties, and the preparations for loading the cannon, which shew to demonstration, that the case, as stated by the accomplices, is in the whole of it correct. It appears to me, that from the evidence as it will come before you, it is impossible to entertain a doubt upon the subject. But it is not for me to determine it, it is for you when you have heard the evidence dispassionately to judge.

It may be said that this was a wild and visionary project; and because it was a wild and visionary project, you will probably be told that no such project was formed. The question is not whether you or any other prudent and sober man, even if his heart would allow him, would have embarked in a design of this nature. It is impossible to examine the history of the plots and conspiracies by which any country in the world has in its turn been agitated, and not to say that, independently of other considerations, there is not one in a hundred in which any prudent

man would have embarked. You will find them in general ill-arranged, wild, and extravagant, leaving every thing to hazard, formed with inadequate means, like that which is now the subject of your consideration. But men become enthusiasts in cases of this nature; they are blind to the immediate difficulties; they look to the attainment of the ultimate object, and, in so doing, overlook the impediments in their way. But let me only state one observation to you, and you will cease at once to consider that any argument can be founded upon the visionary nature of this plan, when you come to apply the case to these particular individuals. They had considered—~~surely~~ I know, but they had considered—that the great mass of the labouring part of the country was ripe for insurrection; they considered them as radically disaffected to the government of the country; they thought therefore that if they could strike this sort of stunning blow, they might at once commence an insurrection and revolt that would enable them to take possession of the government of the country. If they were right in the suspicion they had formed, that disaffection had spread so widely, and had assumed such a character, the project ceased to be wild and visionary; and it is upon that opinion, and that opinion alone, that the whole of this plan appears to have been built. But the question is not whether the project was extravagant, but whether the project was formed; and you will look to the evidence that will be laid before you, for the purpose of ascertaining that fact; and however wild, however extravagant it may appear to your sober judgments, if you find it proved by the testimony of witnesses, and by an appeal to facts which cannot be perverted or denied, that such a project was formed, then however wild and visionary it may be in your estimation, it will be your duty to pronounce accordingly.

I have laid this case simply before you. My learned friend who sits near me, and I, have no interest to answer upon this occasion, but to bring this case simply, distinctly, intelligibly before a jury of the country; every one of you is as much interested in the result of this inquiry as we can be: for myself I speak most sincerely, when I say that I am desirous only that justice should be fairly administered upon this occasion. I entreat you, if any reasonable doubt should exist in your minds upon this question, to remember the benevolent principle of the law of England, and give the prisoner the benefit of that doubt; but if after you have considered the whole question,—if after you have heard the whole evidence, it shall carry conviction irresistibly to your minds; however painful it may be, yet I am sure you will discharge your duty, whatever may be the consequence, with firmness and integrity.

EVIDENCE FOR THE CROWN.

*Robert Adams sworn.—Examined by
Mr. Attorney General.*

You are now a prisoner in custody, I believe?—Yes.

Before you were apprehended, did you reside at Hole-in-the-wall passage?—Yes.

That is near Brook's-market?—Yes.

Were you acquainted with a person of the name of Brunt?—I was.

When did you first become acquainted with him?—The first of my acquaintance with Brunt was at Cambray in France; at that time he passed by the name of Thomas Morton.

I believe some years ago you were a soldier in the Oxford-blues?—I was.

How many years ago?—About eighteen years ago last Christmas.

You were discharged from illness?—Yes.

What has been your trade or employment since?—Chiefly shoemaking.

When you were in France were you pursuing that trade with the English army that was there?—I was.

When did you renew your acquaintance with him in this country?—I cannot pretend to say the month, but some few months after I returned.

Where did Brunt live for the last few months?—He lived in Fox-court, Gray's-inn-lane.

Do you know a person of the name of Thistlewood?—Extremely well.

When did you first become acquainted with him?—On the 12th of January, a Wednesday, I think.

In this year?—Yes, it was on a Wednesday; I think Sunday was the 9th.

Who introduced you to him?—Brunt and Ings.

The prisoner at the bar, Ings?—Yes.

How long had you known Ings before that?—About five or six days.

Where were you introduced to Thistlewood?

—At his lodgings in Compton-street, Clare-market; Stanhope-street, I mean.

Had you a conversation at that time with Thistlewood, in the presence of Brunt and Ings?—I had.

Tell us what passed upon that occasion?—On Brunt introducing me into the room to Thistlewood he said, "Here, Mr. Thistlewood, is the man that I was speaking to you about." "Oh, is this the man?" says Thistlewood, "you belonged to the Life-guards, did you not?" I said no, that I belonged to the Blues, the proper name of the regiment was the Royal-horse-guards. "I believe," says he, "you are a good soldier, and can use a sword well." I told him I once was a good soldier, and I once could use a sword well; I told him I could use a sword sufficiently to defend myself, if occasion should require it. Upon this he turned the subject respecting the different shopkeepers of London, saying they were all a set of aristocrats, and all working under one system; that

he should glory to see the day that their shops were all shut up, and well plundered. He next turned his discourse respecting Mr. Hunt, saying that Hunt was a damned coward, and he was no friend to the people; that he had no doubt in his mind, could he get into Whitehall to overlook the books there, he should find his name upon the government books as a spy for government. Upon this he turned his discourse to Mr. Cobbett, that he had no doubt he was as bad; that with all his writings, he was not a man for the good of the country at all.

Did any thing more pass?—There was nothing more passed at this time, further than that Brunt said, he had two men to call upon in Carnaby-market; he asked Mr. Thistlewood whether he would call upon them for the purpose of seeing those men; this I did not mention before.

Lord Chief Justice Dallas.—Never mind what you mentioned before.

Witness.—Mr. Thistlewood declined it, and upon that we left the room.

With Brunt and Ings?—Yes.

Mr. Attorney General.—I believe you went to prison on the 17th of January, for debt?—Yes.

Had you, previous to this, other interviews with the prisoner and Thistlewood?—I had an interview with him on Sunday the 16th.

Where was that?—At the White-Hart in Brook's-market.

Whereabouts did you meet? In what part of the house or premises?—We first of all met in the tap-room, and proceeded from the tap-room to the room we had taken.

Where was that room?—In the back yard on the ground floor.

Behind the White Hart?—Yes.

Who were present at that meeting?—There were Thistlewood, Ings, Hall, Brunt, Tidd, that was all, besides myself.

On the following day, the 17th, you were taken to prison?—Yes, I was.

How long did you remain there?—I remained there until the day after the death of the late king.

That was the 30th of January, I believe?—When did you next meet the prisoner at the bar, Ings?—I saw him the day after at the White Hart.

That would be the 31st then?—Yes.

Did you go with him to any other place, or meet him at any other place but the White Hart?—I believe I saw him at Brunt's room.

Whereabouts was Brunt's room, of which you are now speaking?—The room that Brunt occupied was a front room on the second floor, and the room taken for the meetings was a back room on the same floor.

Do you recollect who were at Brunt's room on the night of the 31st, when you went there?—I saw Thistlewood.

Lord Chief Justice Dallas.—About what hour

was it?—This was between six and seven o'clock in the evening.

Mr. Attorney General.—Had you ever met in that room before you went to prison?—No, never.

This was the first time you had been in that room?—The first time I had known of its having been taken.

Mention whom you recollect to have been there on the evening of the 31st, when you say you went there between six and seven o'clock?—I will mention as far as my recollection enables me. I saw Thistlewood, Brunt, Ings, Hall, Edwards: I cannot charge my memory with any other at present.

Did any thing particular pass on that evening, in that room, that you recollect?—Nothing particular that I recollect.

When were you next at that room?—I believe it might be about the Wednesday night, to the best of my recollection.

At what time on the Wednesday were you there?—About seven o'clock in the evening.

Who were there on this Wednesday evening that you recollect?—I saw Ings, Hall, Harrison, and Davidson.

Any other persons that you recollect?—Thistlewood, Brunt, and Edwards.

Do you remember any thing passing on that evening?—There was a conversation between them respecting proclaiming of the new king; the indisposition of the new king brought up a conversation, a few words were said upon it.

Did you see any thing in that room that evening?—I did.

What did you see?—I saw some pike staves.

Did any thing pass on the subject of those pike staves?—Mr. Thistlewood made a remark that he wished those pike staves were all feruled, and holes bored at the end of them in order to admit the pikes; that they might be taken to a place of safety, which he called the dépôt, as he did not consider them to be safe there.

Did you know at that time where that dépôt was?—Not at that time.

Did you afterwards know?—I did.

Where was it?—At Tidd's.

At the house of a man of the name of Tidd?—Yes.

Where did Tidd live?—In the Hole-in-the-wall passage, an adjoining house to that where I lived at that time.

Thistlewood remarking that those staves should be removed to the dépôt; did any thing more pass upon the subject of them at that time?—No further than leaving word with Mr. Brunt, that he hoped they would be taken there when they were done, but they were not finished at that time.

What sort of staves were they?—They were green sticks, the substance of my wrist, some larger, some not so large; they were quite green, they were brought from the other side of the water. I did not see them brought, but I heard Ings say that he brought them there; they were fresh cut.

Do you recollect any thing more happening or passing that evening?—Yes; this evening it has come to my recollection: I saw, after the conversation that had passed respecting the new king, Ings himself pull a pistol from his pocket.

On that evening?—Yes, on that evening.

Was any observation made?—Yes, from the discourse; it being said that it was likely he would die, it was remarked by Thistlewood, he said he hoped he would not die in consequence of the duke of York coming to the crown. On this, Mr. Thistlewood said he had rather the new king would live for a little while longer, as it was not their intention that he should ever wear the crown. On this, Ings alluded to the people of the country in general, saying they were all a set of damned cowards; that the day the prince regent, at that time when he was prince, opened the parliament, "I, myself" says he, "went into the park that very day, and took a pistol in my pocket, with the sole intention to shoot the prince regent;" on his making use of that expression, he takes his right hand, pulls the pistol from his pocket, and, to convince them of the sincerity of what he had said, "There," says he, "is the pistol that I took."

Foreman of the Jury.—On what day did this take place was it the 2nd of February?

Mr. Attorney General.—Yes, we are still upon that evening.

Witness.—Regretting with himself that he had not an opportunity to do what he had intended, saying, had he done it, he had not cared a damn for his own life. I cannot bring to my recollection any thing further that passed that night.

How often did you meet at this room?—The appointed time was twice a-day, eleven o'clock in the morning, and seven in the evening.

Was there any furniture in this room?—Nothing but a stove fixed in the room.

Did you learn from the prisoner, or any of those persons whose names you have mentioned, for what purpose the room was taken?—I learnt that the room was taken for the purpose of Mr. Ings, taken for him; but for what purpose the room was taken, I cannot say, for I was not present.

Did you attend many of those meetings between the day you have mentioned and Saturday the 19th?—I did, but not so regularly as I did afterwards.

At those meetings at which you were present, between the 2nd of February and the 19th, did you at all or any of them see the prisoner Ings?—I saw him at every meeting I was at.

Do you recollect any meeting in the interval between the 2nd and the 19th, shortly before, or about the time of the king's funeral?—I cannot speak positively to the date, I can come within a few days.

Do you recollect a meeting before the time of the king's funeral?—Yes.

At that time, whom did you find in the room when you came in?—I found Thistlewood there, and Brunt, Ings, and Hall, Harrison, Davidson, and Bradburn.

Were they all there when you first came in?—They came in, some of them, afterwards.

Who were there when you first came in, according to the best of your recollection?—To the best of my recollection there were Bradburn, and Edwards, and Brunt.

Was Harrison there?—Yes.

Harrison had been in the life-guards?—Yes.

Do you recollect any conversation about what might be done at the time of the king's funeral?—Yes.

By whom?—Harrison. At the time Harrison began this subject, I was close by him; he had been communicating this to Thistlewood.

Tell us what passed after you came in?—Thistlewood began to tell me of the proposition Harrison had been making to them.

What did Thistlewood tell you?—That Harrison should say he had seen one of the life guards, and that the life-guardsmen should tell him, Harrison, that on the night of the funeral of the king, every man in the life-guards in both regiments that could be mounted were to attend the funeral of the king, and the foot-guards as well, all that could be spared, were to attend the funeral, and the police officers as well that could be spared from London. This was the conversation that passed between Harrison and the life-guardsmen; that after he left the life-guardsmen, it struck him that would be a favourable opportunity to collect their men together.

To do what?—For the sole purpose of having a riot in London that night, and to put themselves in possession of the cannon in Gray's-inn-lane, two pieces there, the six pieces of cannon at the Artillery-ground. It was thought by this time, when they had got these cannon, they should be able to proceed by means of the people who would turn over to them. They thought it would be best to send a party of men to Hyde-park-corner, in order to stop any orderly of his majesty's service proceeding from London to Windsor, to give information of what was going on in London. At the same time it was proposed, that the telegraph on the other side of the water should be seized, to put a stop to it, in order to prevent that communicating any transaction that was going on in London to Woolwich: at the same time it was thought necessary to dig entrenchments across the ends of the roads that led to different parts of London; to stop the artillery passing to those parts of London.

Was any thing more said about their plan?—It was thought by Thistlewood as well as Harrison; he agreed in his ideas on this head, that in case the soldiers at Windsor got any accounts that there was a disturbance in London, they would be so over-tired on their arrival in London, that they would not be fit for

any duty. During this discourse, Brunt and Ings were not present at the time this was talked of.

But they came in?—Yes, at the conclusion of the observation I have just been repeating.

Upon Ings and Brunt coming in, what passed then?—On Ings and Brunt coming into the room, Thistlewood goes to them, and communicates to them the plan that Harrison had proposed, and what he had laid down by way of amendment, what he thought was necessary or might be done.

Did he communicate to them that which you have been stating to the court?—In short.

What did Brunt or Ings say to that?—The observation that Mr. Thistlewood had made to them did not meet with their approbation.

What did they say?—There is nothing short of the assassination or murder of the ministers. I will not be sure which was their expression: but there was nothing short of that should satisfy them.

Had you before this meeting heard either from Brunt or Ings, or any of the others, that there was any intention to assassinate or murder his majesty's ministers?—Yes.

From which?—From Brunt and Ings both.

Do you recollect any thing more passing at that meeting?—I do not recollect any thing particular that night, but I can recollect a circumstance between that and the 19th.

What was that circumstance?—Ings was in the room; his blood was all on the boil to think that he could not get to do that which he wanted to do.

Never mind that, what did he do or say?—He said, we must have the ministers, if possible, before the parliament dissolves.

On Saturday the 19th were you at Brunt's room?—I was.

At what hour of the day?—Between eleven and twelve.

In the forenoon?—Yes.

Were any persons there when you went in?—Yes.

Who were there?—I saw Thistlewood, Wilson, Davidson, Harrison, Ings, and Hall; I do not recollect any body else.

What passed upon your coming into the room?—On my entering into the room they seemed to be in a deep study between themselves; all on a sudden they got up, saying that it was agreed on, that if in case nothing occurred between this and next Wednesday night, that Wednesday night should be agreed on to go to work, for they were all so poor they could not wait any longer.

Was any thing proposed or settled?—Thistlewood at that time proposed there should be a meeting the following morning, at nine o'clock, in order to form a committee.

For what purpose?—The purpose of drawing out a plan to act upon; on this they were going to separate. Thistlewood all on a sudden said, "Oh, Brunt, if you go round to any of your men, give them orders to come armed."

Was Brunt present at this meeting?—Yes.

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You have not mentioned his name?—Brunt turns himself round, and says, "Damn my eyes! are you afraid of any officers coming into the room, if any officers enter the room now, as time gets so near, I will take damned good care they shall not go out alive."

In pursuance of this proposition did you go there again on the Sunday morning?—Yes, I did.

About what time in the morning?—Just at the turn of eleven.

Tell us whom you found in the room when you went there on Sunday morning?—When I went, there were Thistlewood, Brunt, Ings, Harrison, Davidson, Hall, Bradburn, Wilson, Cook, Tidd, Edwards, and myself.

What passed after you entered the room?—I had not been in the room long before Mr. Thistlewood thought it highly necessary, as there were twelve men in the room, which was enough to form a committee, for some one to take the chair and enter into business; on this he proposed Tidd to take the chair.

Did Tidd take the chair?—Tidd took the chair, with a pike in his hand at the same time.

After that what was proposed or what was said?—After the chair was taken, Thistlewood standing on his left and Brunt on the right of Tidd; Thistlewood proposed that as they had been waiting so long, and were all out of patience, and there was no likelihood of the ministers meeting all together; it was agreed, he said, between themselves, that if nothing occurred between this and next Wednesday night, the ministers should be taken off separately at their own houses; he said, during this, they should not have so favourable an opportunity in destroying so many of them as they intended to have done, but as there was no signs of their coming all together, they must put up with what they could get: he thought within himself that three would be as many as they would be likely to kill.

Three of the ministers?—Yes; he proposed that this should be done on Wednesday night; it was proposed that, on the same evening, the two pieces of cannon in Gray's-inn-lane, and the six at the Artillery-ground, should be taken, and that Cook should be the person intrusted with that command; that Cook should be at the head of that party.

Lord Chief Justice Dallas.—Do you mean that Cook was to be at the head of the party to take the two and the six, or the six only?—The six at the Artillery-ground only.

Mr. Attorney General.—Was any thing said as to what was to be done with this artillery?—After he had got the cannon, it was proposed that these cannon should be loaded on the ground before they were brought out to bring them into the street; after that was done, and if any body interrupted them, these cannon were to be in readiness to fire on those persons that interrupted them directly; but if Cook found himself so situated by people coming over to him, that he would find him-

self able to make a movement, he was to move from there to the Mansion-house.

What was to be done there?—The Mansion-house was to be beset on both sides; the six cannon they were to take there were to be divided into two divisions, three on each side: Cook was to go to the Mansion-house, make a demand of it; if the Mansion-house was refused, he was to withdraw directly, go to his cannon, and give orders to fire on both sides; on doing this, it was thought they would soon give up the house to them.

What was to be done with the Mansion-house?—The Mansion-house was to be the seat of the provisional government. After they had secured the Mansion-house, it was thought that they might, with the two pieces of cannon that would be brought from Gray's-inn-lane, attack the Bank of England. After they had attacked the Bank of England, it was proposed to plunder it, provided they succeeded, which they made no doubt of: but they did not intend to destroy the books; Thistlewood thought it was necessary to keep the books, as that would be a means of bringing to light some of the proceedings of government, they had not yet got possession of.

Did any thing more pass?—There was something more belonging to this plan, but it was not proposed on this day.

Confine yourself to this day?—Mr. Palin was then proposed by Thistlewood.

Was Palin present?—No, he was not then.

What was said about Palin, at that time, by Thistlewood?—Palin should be the man to set fire to the different buildings that were proposed. As to the time, Thistlewood said they could not come to any particular set time at the moment, but as there would be time between that and the Wednesday night, he thought it better to leave that to a future opportunity.

After Thistlewood had made this proposal, tell us what passed?—After Thistlewood had made this proposal, he said, he had nothing more to say at that time upon it, but that Brunt, or his friend Brunt, had a proposition to make, respecting the assassination of the ministers—how it was to be done; on this Thistlewood declined; and Brunt came forward directly with a view to propose what he had to say, and was beginning to speak; Thistlewood said, "Stop, you had better let the proposals I have made be put from the chair, to see whether every one in the room is agreeable."

Was it put to the vote?—He put it to the men, "If any one likes to speak or say any thing on that which has been dropped, they are at liberty to speak."

Was the proposal put from the chair?—Yes, it was put from the chair, and was assented to by all that were in the room.

Being assented to, did Brunt say any thing?—Brunt came forward, saying, that the proposal he had to make was respecting the assassination of the ministers; he said it should

be done in this way, that as many men as they could get together for that job, should be divided into as many parts as they thought they should be able to kill ministers, he supposed three or four.

Was that agreed to?—Brunt had more to say before that was put; he said, after these men were so lotted out for the killing of each of those ministers, that there should be one man from each lot should be drawn, and that man that it fell upon, should be the man that should murder the gentleman or the lord that they had to kill. The man that was appointed to do this, if he made an attempt and there was the least signs of cowardice seen in the man, that man, if he did not do that, was to be run through upon the spot.

Was that proposal agreed to?—This proposal was agreed to.

After that, do you recollect any other persons coming into the room?—Yes.

Who came in after that?—Palin, Potter, and Strange.

Before they came in, and after this proposal had been made by Brunt, do you remember any thing being said by any other person upon this subject? did Ings say any thing?—He did not.

Did Thistlewood communicate to Palin Potter, and Strange, the plan?—They were communicated to them both; Thistlewood his, and Brunt his; and they agreed to them.

Did any thing pass after they had agreed to them?—Mr. Palin had something to say upon it.

What did Palin say?—Palin got up and said "Mr. Chairman, I wish to speak a few words upon what has been dropped by Mr. Thistlewood and Mr. Brunt. I have paid perfect attention to what has been said, and have been one that has assented to it, agreeing as I do within myself to the propositions that have been made, if in case they can be carried, I consider it will be a great acquisition to what we have in view; but this is what I want to know"—"you talk of from forty to fifty men for the west-end job," as it was called by Thistlewood; "you talk of taking the two pieces of cannon in Gray's-inn-lane—the six pieces of cannon from the Artillery-ground, and for myself to act my part, and all this to be done at one time." This was what he wished to be satisfied upon—how it was to be done.—"You ought to know better than I do what men you have to depend upon. I, for my own part, can give no satisfaction with respect to the men I may bring forward, unless I could be intrusted from the committee that was there sitting to communicate to them in part, if not in full, what their plan was, and what they were going to do, and when they would be wanted." It was thought that Mr. Palin knew what kind of men he had, and it was hoped he would be able to trust them.

Was that said?—Yes.

Who said that?—It was said by Tidd in the chair, and Mr. Thistlewood and Brunt; this

conversation passed between them—if Mr. Palin had got such men, as he thought he could depend upon to intrust them with what was in hand, they did not conceive where the harm could be of Mr. Palin having that liberty.

Did any thing more pass at that meeting that you recollect?—No, not at that time; on this the chair was left; just after this, the chair being left, they were walking about the room, and Thistlewood turned round “Well thought of, Brunt, as thy friend Palin is here, you may as well take him to the place, which is just by here,” that was Furnival’s-inn-buildings; “let him look at the place, and pass his opinion upon it, to see whether it is practicable to do what we think of.”

Did Palin and Brunt then go away together?—They did.

How long were they absent?—I do not suppose ten minutes, to the best of my calculation.

Fox-court is near at the back of Furnival’s-inn?—It is not at the back of it, it is at one end of it.

It is behind it?—Yes.

Did they return again?—They did.

Upon their return, did either of them, and which, say any thing?—It was given in to the committee, that Palin thought it a very easy job, and it would make a good fire.

Did they then separate?—No, upon this Brunt renewed the subject of the assassination again; he said he had not an idea upon his mind that there would be any difficulty in regard to fixing upon the men who should be the men that murdered their different lordships. Ings was the man that said, whoever had the lot to murder lord Castlereagh, I am the man that will turn out to murder that thief.

When did you meet again?—On the Monday morning.

This being on the Sunday?—Yes.

About what hour did you go to Brunt’s on the Monday morning?—To the best of my recollection about ten.

Who were in the room when you got there?—I saw Brunt, Harrison, and Thistlewood.

Was Ings there then do you recollect?—Yes, he was.

Were any other persons there that you recollect?—I cannot say that I can charge my memory whether they were then, they were in the course of the morning.

Tell us what passed on your going to the room on that Monday morning?—On going into the room on the Monday morning they seemed to be rather cast down.

Tell us what passed?—The principal that passed in the morning was in consequence of a report which had been heard out of doors, and which I communicated to them.

What was that report which you communicated to them, state it shortly?—It was what Mr. Hobbs had told me the preceding night.

You must not refer to what you were told unless you communicated it?—That there were two officers had been there from Hatton-

garden and Bow-street, from which it appeared that there was an information at Bow-street, and likewise at lord Sidmouth’s office, of what was going on.

What did they say to you?—Harrison turns himself round upon me, and says, “You have acted damned wrong.” I said “Why?” Brunt turned round directly, and said, “You have acted wrong, Adams,” I do not know, indeed, whether he mentioned my name, “if you have any thing to communicate, whatever you may hear out of the room, it is your place to speak either to me or to Thistlewood;” I told him I did not conceive I had any right to speak to either him or Thistlewood, I thought it was my duty to mention it to the whole, as it concerned the whole.

After this, did they go from the room for any purpose to separate?—They began to think of separating, to call on their different men, and to call on the Mary-le-bone Union.

Was there to be any meeting again that evening?—Not on that evening.

On the following day, the Tuesday, did you go again to Brunt’s in the morning?—Yes, I did.

About the same hour?—About ten o’clock as nearly as I can guess, they began to meet earlier after the 19th.

Whom did you find there on the Tuesday morning when you got there?—I found Thistlewood in the room, I found Brunt in the room, I found Tidd there.

Was Ings there?—Yes, and Hall; I had not been in the room long before I saw Ings pull out three daggers from out of his pocket; he was asked the intention of those daggers, he takes one in his hand and makes a rush, in that kind of way [*describing it*], “with a view,” says he, “to run into their bodies,” with an expression which I will not repeat, unless it is necessary; those being handed about they were put into his pocket; just at this juncture of time, just afterwards, in came Edwards, Edwards goes up to Thistlewood to tell him he had seen it in the paper that the ministers were to dine together, on the Wednesday evening, at lord Harrowby’s.

Upon that being communicated, was any thing done?—Thistlewood rather doubted it, having seen a paper in the morning and not having seen that; and he proposed, in order to satisfy every one, that the paper should be sent for.

Was the paper sent for?—It was,

On its being brought back, was it read?—It was read by Thistlewood himself.

Upon that, was any thing said by any of the party?—When the paragraph was read, and appeared to be true, Brunt jumped about the room, and ran backwards and forwards, “Now damn my eyes I believe there is a God; it has often been my prayer that God would call those villains together; now he has answered my prayer.”

What further passed?—Ings was equally as pleased as Brunt.

What did he say?—He said that would give a better opportunity, he should have an opportunity now of cutting lord Castlereagh's head off.

Did Thistlewood propose any thing then?—Thistlewood proposed then that there should be a committee sit in order to enter into another plan of assassination of the ministers altogether.

Was the committee formed?—The committee was formed; I was appointed myself to take the chair first: I took the chair and called to order. Thistlewood was going to proceed in his business, I having something that I wished to say, put a stop to him.

What did you say when you stopped him?—Before they proceeded any further in the business I hoped that every man that heard what fell from my mouth yesterday morning had given it a due consideration.

What passed upon that?—On my saying this they were all like a set of mad devils more than any thing else. Harrison was walking about the room like a madman; he looks at me like a madman, with his arm going all the while.

What did he say?—He said any man that threw cold water upon what they had then in view, he would run that man through directly with a sword.

In consequence of this confusion did you remain in the chair?—In consequence of this confusion, I was considered not fit to keep the chair.

Who was put into the chair?—Tidd.

Was any thing then proposed or said by any other person?—There was a proposition by Mr. Thistlewood respecting a plan that was to be proceeded in by the taking the ministers all together.

In consequence of your leaving the chair, was any thing proposed by any body? did Brunt propose any thing?—Yes.

What did he propose?—As Thistlewood was going to speak, Palin —

Palin was there then?—Yes, he was, he said, "No, as there has something fell from Mr. Adams's mouth yesterday morning, and he has made an allusion to it again this morning, I want to know what it is Adams has alluded to."

Was any thing further said by any body upon this?—Upon this Brunt jumps up directly, "Damn my eyes I will tell you what it is;" upon that he got up and communicated to Palin the same as I had communicated to them.

Did Brunt make any proposition?—He proposed from what had been said, that there should be a watch put upon earl Harrowby's house.

When was that watch to be put?—At six o'clock in the evening to a minute of time.

What were they to watch for.

They were to take particular notice who went into the house, if any body went in that they thought had the appearance of police

officers or any soldiers such was to be communicated to the committee.

What was said upon that by any other person?—This was agreed to; but Brunt said further, that if in case there should be nobody found to enter the house, such as was likely to give us any obstruction, the business should be proceeded on; this being done, it was looked out who should go on the watch; they were picked out by Brunt, on a proposition made by him.

Were their plans further talked of?—This plan was dropped regarding Brunt; Thistlewood then came forward to address the committee.

Lord Chief Justice Dallas.—What do you mean by dropped?

Mr. Attorney General.—Do you mean an end put to the conversation?—Yes.

Was it agreed that there should be a watch or not?—It was determined that there should be a watch set, and then it was dropped.

Then Thistlewood came forward?—Yes.

What did Thistlewood say upon that occasion?—Thistlewood came forwards saying, it was a much more favourable opportunity in the ministers all meeting together than what it would be to take them separately at their houses: "In taking them separately at their houses, we shall stand a chance to have but two or three; in taking them all together at the dinner we may have from fourteen to sixteen of them, which will be a rare haul: I think forty men will be sufficient: I will go with a note to the door, to be presented to lord Harrowby by the servant, telling him I must have an answer." On going in he proposed that he should be followed by men supplied with pistols and different things, pikes, and so on, to see if there were servants about, and to present pistols to their breasts; if the servants offered to make the least resistance, they were to be shot upon the spot; when this was done the men that were appointed to take care of the house were to rush in after Thistlewood, take possession of the stairs leading to the upper part of the house; two men to do that; two men to take the command of the stairs leading to the bottom part of the house; each of these men was to have a hand-grenade in his hand, in order to put a stop to any body making any retreat from the upper part of the house, and as well from the lower part of the house; if any person attempted a retreat, if there was an attempt of the people, such as the servants in the house, to make their escape, a man was to clap fire to this hand-grenade and send it in amongst them, with a view to destroy them all together; two men at the same time were proposed to take the command of the area, one with a blunderbuss, the other with a hand-grenade; if any attempt was made from the lower part of the house, from the area, they were to be served in the same way as the persons in the upper part of the house. In the time of doing this the men

that were to enter the room, after the servants were secured, and the stairs secured too, were to be led by Ings, at his own proposal.

What did Ings say?—Ings said he would go to their lordships' door, and particularly mentioned the description of thing he would take, in order for his defence; that he would have a brace of pistols; he would have a knife that he had prepared for the sole purpose, to cut the heads of them off as he came at them; the head of lord Castlereagh and lord Sidmouth, he was determined to bring away in a bag he had got for the purpose, and one hand of lord Castlereagh he was determined to bring away; in a future day that would be thought a great deal of.

Did he say any thing about what he was to say when he entered the room?—He said he should say on entering the room, that he would go in this way, "Well, my lords, I have got as good men here as the Manchester Yeomanry; Enter citizens and do your duty."

Who were to go into the room with him?—He was to be succeeded by the two swordsmen that were appointed for the purpose.

Who were they?—Harrison and myself were appointed.

Was it stated what was to be done after this was accomplished at lord Harrowby's?—They were to make their retreat from the house in the quickest manner they could, with Harrison, going to the horse-barracks, in King-street, with illumination balls, as they called them, and fling them into a straw shed, with a view to setting fire to the barracks.

What was he to do with the fire-balls?—To put them into the window where the straw is kept to set fire to them.

What more was to be done?—The others were to proceed, after they had left the house, to Gray's-inn-lane, with a view to take the two cannon there: on the road to Gray's-inn-lane if they met any body that offered to give them any interruption, it was agreed that they should be shot or run through with a pike that they might have.

You say a party was to go to Gray's-inn-lane: was any thing else proposed to be done than taking the cannon in Gray's-inn-lane?—It was proposed to take the cannon as I have before described.

What cannon?—The two cannon in Gray's-inn-lane, and the cannon at the Artillery-ground.

Was it proposed or agreed who were to take the cannon at the Artillery-ground?—Cook was the man appointed for that purpose.

Do you remember whether any thing else was proposed?—Ings still repeated that he felt rejoiced that he should have an opportunity of cutting the heads of them off.

Harrison, I think you say, was there?—Yes.

Do you recollect any thing else being stated by the parties present?—Harrison, after this business was done, proposed that there should be a countersign, and those men that had to

go round to inform the men that they had to call upon to come forward to-morrow night to their assistance, this countersign was to be communicated to them.

What was the countersign?—The countersign that was proposed was *button*; it was to be pronounced separately; the man that came up to the man that was to be appointed at the top of Oxford-road, the person approaching was to say *b, u, t*, the one that was there in waiting to receive him was to pronounce *t, o, n*; on this being done, he was to be conveyed to the place that was to be appointed afterwards by Harrison.

That being repeated by the man, the person was to be taken to the place that was appointed?—Yes, he was.

Did you go again to Brunt's that day?—I did.

At what time did you go again?—I called in the afternoon.

About what hour?—It might be three o'clock. On going up stairs, I perceived a strange smell; on my entering the room I saw the cause of it.

Who were in the room?—Ings, Hall, and Edwards. Ings was making the fire-balls for the purpose of setting fire to the different buildings. Edwards was making fuses for the hand-grenades.

Was Hall about any thing?—Hall was occupied in laying sheets of paper down in order to prevent the fire-balls sticking to the hand, after they had been dipped into an iron pot.

Did you stay there at that time, or did you go away and come again?—I went away almost immediately.

Did you call at Brunt's again that evening?—I did, between six and seven.

Whom did you find there, when you returned in the evening?—I found Thistlewood in the room. I saw two strange men in the room.

Two men whom you had not seen before?—Yes.

Do you know the name of either of those men?—I can tell the name of one; the other I cannot.

What was the name of that man?—The name of that man was Harris; but I did not know it then.

Whilst you were there, did Tidd come?—Tidd came about half past eight o'clock.

Did you remain there?—Yes, I did.

Upon Tidd's coming, what passed?—On Tidd's coming into the room, he being one that was appointed in the morning by Brunt, and Brunt himself, to go on watch at nine at lord Harrowby's house—

Who had been appointed to go at six?—Davidson was one, the other I cannot tell.

Davidson is the man of colour?—Yes.

At nine Tidd and Brunt were to go?—Yes. On Tidd entering the room, he expressed himself dissatisfied in being disappointed in not meeting a man that had promised to meet him that night. Brunt said after this, "It is time for us to go on the watch, to relieve the men

at the proper time." Brunt and Tidd started for the purpose of going to lord Harrowby's: in about five minutes Brunt returned back again, saying that they had called at the house where the man was appointed, and had found the man, and that he was likely to be a man of great consequence to them, and that Tidd could not go and leave him. Ings said, then somebody else could go with him. Brunt looked round the room and said, "Adams, there is nobody can go except yourself." I consented, to go: just as I was going out, in came Edwards: he had been a kind of aide-de-camp to go backwards and forwards, and see that the men were on duty.

Did you go with Brunt?—Yes, I went with Brunt. On Edwards coming into the room, I asked him whether there had been any thing seen, he said, "what I have seen or heard I shall communicate to Thistlewood," then Brunt and myself proceeded to Grosvenor-square.

When you came there, did you see Davidson?—I saw Davidson.

Was there any person with Davidson?—There was another man, but he was not near enough for me to notice him; he went off.

How long did you stay in Grosvenor-square?—After we had relieved Davidson, we stopped a very little while, we went to refresh ourselves.

Where did you go to?—I do not know the name of the house, but it is at the corner of the Mews directly at the back of lord Harrowby's house.

Whilst you were there, did any thing happen?—Nothing occurred there except that Brunt got playing at dominoes after we had refreshed ourselves.

With some person there?—Yes. We stopped there till very near eleven o'clock, with my going out twice by the desire of Brunt, at intervals.

To watch?—Yes.

Brunt remaining during that time in the public-house?—Yes.

How long did you stay in, and in the neighbourhood of Grosvenor-square?—Till the time of twelve.

That was the time to which you were appointed to watch?—Yes.

Then did you return home?—I left the square, and came directly home; the watch was to commence the next morning at four o'clock. Ings and Hall were to begin at four o'clock.

The next day was Wednesday the 23rd?—It was.

At what time did you go to Brunt's on that day?—At about two o'clock.

You did not go there till two o'clock?—I called up there occasionally earlier, but did not stop.

Upon your going at two o'clock in the afternoon did you find Brunt?—I found Brunt in his own room.

Not in the room in which you met, but in his own room?—In his own room.

Were there any persons there when you came

in?—There were no persons in the room but himself, his wife followed me in.

Whilst you were in the room with Brunt did any persons come in?—Strange.

Any other persons?—There were two or three whom I had not seen before.

Did you see any thing in Brunt's room?—There were several pistols that I saw lying on the top of the drawers, but the exact number I cannot state.

Was any thing done by Brunt or Strange, or any other persons in that room?—They began to put their flints into the pistols; on Strange coming into the room and those strange men, Brunt directly proposed they should go into the other room.

What did they do to the flints?—They put a bit of leather round them, to secure them.

What did you see on going into the back room?—On going into the back room I saw arms of different descriptions.

What were they?—Cutlasses, pistols, a blunderbuss with a brass-barrel.

Did any persons come into the room while you were there, besides those you have mentioned?—Yes, just after that came Thistlewood, and not long after him Ings and Hall came, and a very little while after that another stranger or two came in.

What passed on their coming in?—They began, as they came in, to prepare themselves with the different arms they wanted to take with them, such as fixing the flints, and fixing slings to the cutlasses; on Thistlewood's coming into the room he looks round him and says, "Well, my lads, this looks something like as if you were going to do something." He came up to me, laying his hand upon my shoulder, and said, "Well, Mr. Adams, how do you do?" I told him I was very low in spirits; he wanted to know what was the matter. I told him I wanted some refreshment, as I had not had any thing to drink that day; he directly proposed to Brunt to fetch something to put me in spirits.

Was any thing brought?—Yes; on this being said, Thistlewood proposed to fetch some paper, in order to write some bills.

What was done upon that?—Thistlewood produced the money to Brunt, and Brunt sent.

Did any thing pass before that, when he proposed to fetch some paper, what paper?—He said he should like the same kind of paper as the newspapers were printed upon. I said to him, "As you do not know the name of the paper, you had better get some cartridge paper, which will answer the purpose equally as well." The cartridge paper was sent for.

Who sent for it?—Brunt.

Whom did he send?—He said he would send for it either his apprentice or his boy.

Was any money given?—Yes.

By whom?—By Thistlewood; Thistlewood produced the money to Brunt.

Did Brunt go out of the room in order to get the paper?—He went out to the door.

Did he bring back the paper?—I cannot say

who brought the paper, but I saw it in the room.

What sort of paper was it?—Cartridge paper.

Upon the paper being brought what occurred?—Upon the paper being brought, Thistlewood sat down to write; he wrote three bills out; in writing the last bill he expressed himself very tired, he did not know what was the matter with him, but he could not write any longer.

Were those bills which he first wrote read to the people in the room?—They were read by himself.

Did he read them aloud?—Yes.

What was it that he read?

Mr. Adolphus.—I must object to that.

Mr. Attorney General.—After he had finished those three bills he appeared tired?—Yes, he did. Am I to state the contents of the bills?

What became of those three bills which he wrote?—Those three bills that he wrote, the first thing that was to be done with them, after he had done with them, was to lay them down in the room, in order to dry: after they were dried they were doubled up; I saw one in Ing's hand, and I saw one in Thistlewood's hand; but what became of them after that, I cannot tell.

Mr. Adolphus.—I only wish to see the thing done regularly.

Mr. Attorney General.—Then, now tell us what Thistlewood wrote upon those bills?—"Your Tyrants are destroyed—the friends of liberty are called upon, as the provisional government is now sitting. James Ings, Secretary. February 23rd, 1820."

Mr. Attorney General.—I will not ask as to the other bills, my lord. I believe some other person was desired to take the pen to write the fourth bill?—Hall was called upon, and he refused it; and another person, a stranger to me by name, whom I never saw before, was called on, and he at first refused.

We will not go into that; was Ings in the room at this time?—Yes.

What was Ings doing?—Ings was very busy in preparing himself for action.

How did he prepare himself?—He put a black belt round his waist, in order to contain a brace of pistols; another black belt he hanged upon his shoulder, to support a cutlass; he next placed on each shoulder a large bag, in the form of a soldier's haversack. When he had done this, he viewed himself and he said "I have not got my steel, I am not complete?" he said "never mind;" he directly draws a great knife from his pocket and begins to brandish it about, swearing at the same time that was the knife he procured to cut off the head of lord Castlereagh and the rest, as he came at them. On being asked what he intended them bags for that he had about him, he positively swore that he intended to bring

away the heads of lord Castlereagh and Sidmouth in them.

You say he brandished the knife; what sort of a knife was it?—It was a large broad knife that he said he had prepared for the purpose, and bound round the handle with wax end to prevent it slipping in his hand, when, he said, he should be at work.

After this, did any other persons come, or did those persons go away?—After this, Thistlewood and Brunt were out of the room.

Who came into the room?—Palin came into the room.

On Palin coming into the room, did any thing pass?—At the time Palin was in the room, perceiving that Thistlewood and Brunt were not present, he takes upon himself to address what were in the room: he said he hoped all that were in the room knew what they had met there for; if such, he hoped they would give it a proper consideration; in the first place, to see whether the assassination was likely to be a thing that would be approved of by the country, and whether in doing that the country would turn on their side.

Was any thing observed upon that?—Just after.

By whom?—There was a tall man in the room made some few remarks on what was dropped, after Mr. Palin went a little further on.

What did he say?—He said, "you seem to speak as if all in the room knew what was going to be done; this is what some of us have heard, but wish to be satisfied. I, for my own part, from what you have said respecting coming to an agreement to stick true to each other, am not afraid of myself, nor do I conceive that any man who turns out in a case like this ought to value his life."

Upon his saying this, do you recollect any thing being said by Brunt?—Just at the conclusion of this, Brunt enters the room again; seeing the alteration in the countenances of what were in the room, he wanted to know the cause; he was told by this tall man again, that there was some in the room that wished to know what they were met there for.

What answer did Brunt make?—"This is not the place," says Brunt, "where you are to be informed; go along with me to the Edgeware-road, there you shall know what you are going about, and all that goes along with me I will take care they shall have a drop of something to drink to put them in spirits."

Was any thing said to you? or did you take any thing yourself to carry to the Edgeware-road?—Yes.

What was given to you?—This blunderbuss with the brass barrel was fixed with a belt round my shoulder, and hung to it, and put under my great coat, that I had then on, to carry to Cato-street.

Any thing else?—After this, there was a broomstick which had been prepared for the reception of a bayonet at one end, this was

Brunt's: I was to take this broomstick in my hand as a walking-stick, there was nothing further communicated, or, at least, done in the room at this present any way particular, except that Brunt said, it was time for us to begin to prepare us to go, as the room where we were would be wanted by Palin's men in the evening.

You told us in the early part of your evidence that some pike staves had been procured and were to have some ferrules put upon them; had they had, to your knowledge, ferrules put upon them?—Yes I saw ferrules put upon some of them.

Where, and by whom?—In the room at Brunt's, I saw a dozen of them ferruled by Bradburn.

Was there any cupboard in that room?—There was.

Had you ever seen that cupboard open?—Yes.

What was that cupboard used for?—It was used for the reception, for the purpose of putting swords; I saw some tallow there; I saw some pitch there; I saw some of those small hand-grenades in it, those were the principal things I have seen there.

Had you ever seen any gun-powder prepared there?—I had seen gun-powder, a musket, belt, and the hand-grenades laid there.

What had you seen done with powder in that room?—I saw the powder put into some of those hand-grenades to complete them.

Did you ever see the powder put into any thing else?—Not to my knowledge.

Have you ever seen any bags of any description there?—I saw the powder that was brought in a brown paper bag there, and I have seen Brunt take a bag to carry the hand-grenades there.

What time did you go away from Brunt's that evening for Cato-street?—As nearly as I can calculate, it was drawing very near to six, or it might be six.

With whom did you go away in company?—I went by myself, and was to be followed by Strange and this tall man, and two or three others whose names I did not know, and Brunt was to follow.

Did you go on towards the Edgware-road?—I went right up Holborn, and right up Oxford-street; in going up Holborn,

We need not go through the particulars of your journey to Cato-street, did you afterwards go to Cato-street?—Yes, I did.

Who went with you finally to Cato-street?—Thistlewood, Brunt, and a strange man, whom I do not know.

Where did you meet Thistlewood before you got to Cato-street?—In the Edgware road.

When you got to Cato-street where did you go? into what building or house?—I entered into a stabling, a kind of stable.

That is near the end of Cato-street, by John-street?—Yes.

You went under an archway?—Yes.

This stable is the first building on the right-

hand side after you have passed through the archway?—Yes.

When you got into this stable whom did you find there?—I found Davidson sitting, and a person standing apparently as if they were doing something with the pikes; I passed them in the stable and went up the ladder into the loft above.

Were there any persons in the loft, over the stable, when you got there?—Yes; I found Ings and Hall there.

Any other persons?—Yes, Bradburn.

What were those persons about when you got into the loft?—They were taking the different arms.

Where were those arms?—Lying on the bench that was in the room.

There was a bench in the room on which the arms were?—Yes.

Was Tidd there when you arrived?—No, he was not.

Do you recollect any thing passing in consequence of Tidd's not being there?—Yes; in consequence of Tidd not being there, Thistlewood and Brunt were talking about it, Thistlewood began to be rather agitated for fear Tidd should not come.

What said Brunt?—Brunt seeing the men rather confused, for it was pretty general, said there was no occasion for any uneasiness respecting the arrival of Tidd, for he would venture to forfeit his existence that Tidd would be forthcoming. About this time, in consequence of what had appeared in the faces of the men, Ings began to show himself mad, quite terrified, he began to stamp and to swear, to take both his hands up in this way against his hair, as if he would tear it off, and said, "Damn my eyes, if you begin to talk of dropping the concern now, I will either cut my throat or shoot myself."

Did Thistlewood say any thing?—Yes; Thistlewood then said "for God's sake do not think of dropping the business now; if you do it will turn out a second Despard's job." Thistlewood, looking round, said, "you seem to think there are not men sufficient." He cast up the number of men that were in the room: "let us see, there are eighteen here and two below, that makes twenty, that is quite sufficient:" says he "suppose there to be sixteen servants in lord Harrowby's house, they are not armed; we shall go prepared, and it will not take us, from entering the house to coming out above ten minutes."

Was any thing done in respect to the men who were to enter the house?—He proposed that there should be fourteen men out of the twenty that should enter the room; that he thought six would be sufficient to take care of the servants.

When did Tidd come in?—He came in about twenty minutes, to the best of my recollection, before the officers entered the room.

Did Tidd bring any persons with him?—I did not see him enter the room, but I saw him after he was there.

You say he proposed fourteen persons should enter lord Harrowby's house?—Yes, on seeing Tidd in the room (for he was in the room at the time Thistlewood was talking of this), seeing Tidd in the room, Thistlewood fixed his eye upon him. I looked at him, and Thistlewood, upon seeing this, turned his eye away directly. I said, "do not you think it is a pretty set out? do you think they will be able to do this thing?" he said, "Never."

You say fourteen were to go into the house?—Fourteen were to be selected to go into the room; it was first proposed to be put to them to see if they were all willing to go: this was put, and it was agreed to, at the time the men were called out, the fourteen men that were to enter the room. Brunt produces a gin bottle from his pocket. Shall I state the men that were picked out to go into the room?

Was Ings one of those?—Yes, he was.

Were you one of them?—Certainly.

Was Harrison one?—He was one; this being done, thinking to get myself in readiness to go, I heard somebody in the stable.

What did you hear?—I heard something below, and directly there was said, "hollo," and Thistlewood directly takes a candle, and looks to see who it is; upon that, he sets the candle on the bench directly again, in quite a confused state. I never heard him speak.

Did any persons come up the ladder?—There were two officers directly entered the room.

What became of Thistlewood?—He sidled off from the place where he was, into a little room.

Was that the little room nearest the street?—It was the room, as the officers came up, on the right-hand side.

There were two rooms there, we understand?—I do not know that; I had never seen it till the officers came up.

Did any other persons go into that little room besides Thistlewood?—There were Ings and Brunt I saw in, and Harrison.

What happened upon the officers coming up?—On the officers coming up into the room, they stood in the room at the top of the ladder, as it were, with a small pistol presented, saying, "holloa, here is a pretty nest of you;" looking round, and seeing the arms of different descriptions lying on the bench, and some of them with arms about them, they said, "Gentlemen, we have a warrant to apprehend you all, and I hope as such you will go quietly." On this, Smithers, who was behind, cried, "make room, let me come up:" on Smithers coming into the room, between the two officers that were making way for him, at this moment of time, those that were in this little room made towards the door, a group of them; at that instant of time, I saw a man rush forward from the group of them; at the same time, another hand presented itself with a pistol; at that moment a pistol was fired off, out went the candle, and I could not see what went on afterwards.

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Did you see Smithers fall?—I did not see him fall.

In consequence of this, was there considerable confusion in the room?—Great confusion; the officers, as soon as they perceived their brother officer was killed, ran down stairs, and gave the alarm of murder.

What became of you?—I kept my standing where I was.

In what part of the room were you?—At the end of the bench, at the further end of the room.

Did you get out of the room?—I came out of the room after this.

Down the ladder?—Yes, through the stable, and out under the archway, the same as I got in.

And made your escape off?—Yes, I got out into Cato-street, and turned my head on one side, and there was a pistol fired out at the window at me. I thought it was at me, for there was not a soul besides.

You got out under the archway, and got off?—Yes; as I was under the archway the soldiers were coming through.

When were you yourself apprehended?—On the Friday.

Ings.—Am I allowed to ask any question, my lord?

Lord Chief Justice Dallas.—You may ask any question, but you will consider whether to put it yourself, or to leave it to your counsel.

Mr. Adolphus.—If you will write down any question you wish to propose, if I think it proper I will put it for you.

Mr. Attorney General.—You have been in custody ever since?—Yes, I have.

Robert Adams cross-examined by Mr. Adolphus.

You were examined here on Monday, I think?—Yes.

I should like to know a little more of you; are you an Englishman?—Yes.

Born in what part of the country?—Ipswich, in Suffolk.

Educated as a Christian?—Yes.

You profess that religion, do you, now?—Yes, I do now.

Did you ever cease to profess it?—Yes.

What mode of faith, or disbelief, did you take up while you disbelieved Christianity? what were you then?—I was induced,

Never mind what you were induced; answer my question first, and you shall tell your inducement afterwards. What were you when you were not a Christian?—A man, certainly, in the same form as I am now.

What faith or persuasion had you when you were not a Christian?—If I must answer that question,

You shall answer the question.—Then I will. I was in faith what they termed a Deist.

Did you believe in God when you were a Deist?—They strove to make me,

Did you believe in God when you were a Deist?—Yes.

Then you renounced Christianity to be a Deist, and believed only in God?—Yes, that was the case.

How long may you have embraced Christianity again?—I consider myself to have embraced Christianity again ever since I first received conviction that I was in the wrong.

Give us the day and month?—I cannot.

Was it before the 23rd of February last?—I was convinced even before I was taken, and my conviction grew stronger after that.

Was it before or after the 23rd of February last you called yourself a Christian again?—After the 23rd.

So much for your religion. How long might you remain in the happy conviction of Deism? how many years?—Of a Deist?

When did you renounce faith in our Saviour?—It first happened since last August.

Since last August you renounced faith in our Saviour, and since last February you have taken it up again?—Yes.

In your progress downwards, you say you had got down from Christianity to Deism. Did you ever get to the point of Atheism?—Never.

Did you ever profess yourself a Deist?—Never.

Did you ever deny your belief in a God at all, and that the Scriptures were all a fable?—I never denied a God, though I was brought by that accursed work of Paine's to deny the Scriptures.

And now you are brought to call the Bible a good book, and Paine's accursed. How long did you serve the king?—Five years.

Where did you serve, in England or abroad?—In England.

In the Blues?—Yes, properly speaking, the Royal Horse Guards.

We among the illiterate call it the Blues. Had you any allowance or pension on your retiring from the army?—None at all.

You have retired again to your trade of a shoemaker?—Yes.

Is that your hand-writing? [*shewing a small piece of paper to the witness.*]—Yes, it is.

You were examined here on Monday?—Yes, I was.

Where have you been since?—I have been in the same custody as I was before.

Where was it?—In the House of Correction. Cold Bath-fields?—Yes.

In solitary confinement, or have you seen any body?—I have not been in solitary confinement, but I have not had communication with any body, nor have not had since I was taken.

Have you been in solitary confinement or not?—I have a room in the house of the governor.

Have you been solitary or seen any body?—I may say solitary, for when I reflected with myself,

I do not ask as to your reflections. Have you seen any persons or been alone?—I have certainly seen those that have attended me.

Have you seen any body who told you any thing that passed in this Court after you left it?—No, I have not.

That you swear?—I have not seen any body who told me any thing that passed in this Court.

Have you seen any body who told you any part of what passed in this Court after you left it?—No, I have not.

Have you had any writing, printing, or any other thing conveyed to you, communicating it?—I have had no writing whatever communicated to me.

Then you do not know any thing about what passed?—No; I heard the day before I went off, the day the verdict was given against Thistlewood, that he was found guilty.

Where were you day by day?—I was kept in a room by myself, because I would have communication with no person.

You were guarded?—I had two men with me.

Did you hear any thing of the observations upon your evidence?—No.

Not a word?—No.

Now I will tell you why I ask you that question: you have altered your evidence a good deal since that?—I do not know that I have.

Then I will bring it to your memory, that you have, without going through the whole course of your evidence the other day: how long have you known Edwards?—I have known Edwards ever since the early part of January.

How long have you known Ings, was that by Brunt introducing him to you?—Yes.

And you became acquainted with Brunt, on the continent three or four years ago?—Yes.

From the time you began to hold any communication or correspondence with Brunt, with Ings, and Thistlewood, was it your intention to execute the project they proposed to you, or did you intend to give information against them?—I never intended: it was no inward intention of mine to commit murder, nor I never had any intention to give information against them; after I got into the knowledge of what was in hand, I waited the opportunity to get out of it.

You never intended to commit murder, nor to give information, but you waited for the opportunity to creep out of it?—Yes.

What hindered your creeping out of it at any time?—From threats that had been held out.

Let us see how that is. Early in January, Thistlewood had a conversation with you, in which he said that the shop-keepers were all aristocrats, and he should like to see their shops shut up and plundered?—Yes.

Were you disposed to go that length? should you like to shut up their shops and plunder them?—I should not wish to go that length.

Moderate your action a little?—I am perfectly collected. I can stand here if you desire it till to-morrow morning.

Were you disposed to shut up the shops and plunder them?—I was not.

But you were in the society of men who said they were?—That society I was just entering.

There were no threats held out in that conversation?—Not at that time, that I admit.

You had the benefit of a recess of fourteen days in White-cross-street prison?—But I had had threats before I went into the White-cross-street prison.

Had you had threats before any thing was communicated to you?—Yes; before I went to prison.

Your first conversation with him was in January?—Yes.

What sort of threats were they?—This was the very day before I went into prison. I was asking Mr. Brunt, in the presence of Thistlewood, for the plan that, I was told by Brunt, first of all was drawn up. I wanted to know what it was; I wanted to see it. Brunt said directly that there would be nothing communicated or given till the day of acting. Thistlewood answered this directly, "By no means, there shall be nothing given, and the very day that we think of going to work," then says he, "we will have the men all together, give them a treat, and then we shall tell them what is to be done; and after that we will never lose sight of them." Upon this Brunt said he would take damned good care that there should be no writings kept in the room where they were, that would put them into danger, "But," says he, "if any man I have ever spoken to concerning this will give me reason to suppose he will give information, I will run him through and put a stop to it."

I wonder you were not afraid to come out of prison; that would have been the safest place?—I certainly was, I am sorry I did come out.

How much were you imprisoned for?—Twenty-three shillings and eight-pence.

And these discoveries were made to you before you went to prison, on the 16th of January?—Yes.

Had you been at any meeting with those gentlemen then?—I had met them several times at this public-house.

Whom had you met?—I had seen Brunt, I had seen Ings.

Do you remember on what day you were introduced to Brunt?—On the 2nd of January.

To Thistlewood?—On the Wednesday, I believe Sunday was the 9th, then it must be the 12th.

You told us the other day the 13th, I do not want to fix you particularly?—If I said the 13th, it must be a mistake; I know it was the Wednesday.

That was the first time you ever saw Thistlewood?—Yes.

How many times between that and the time when you went to Thistlewood's did you hear those threats?—I have stated to you the first time I heard threats thrown out.

When was that?—On the 16th.

Who held them out then?—Mr. Brunt.

What day of the week was the 16th, do you recollect?—On a Sunday.

You not being particularly incumbered with Christianity, thought that a good day to meet those people?—Yes, that was the first day we met in the room we were then in.

What room was that?—The White Hart.

It so intimidated you that when you came out again you sought those persons, and went on with their plots?—I had a right to be intimidated with such a man as Mr. Ings; when any thing occurred his whole blood and soul boiled for murder.

You had not seen Ings at that time?—God bless me are you going to reason me out of my Christian name? I have told you I saw Ings between the 2nd and the 9th.

Then I have mistaken you; oh it is so to-day I see; then on the 30th, when you had been imprisoned fifteen days, you joined those parties again?—I did.

Had the thing then got a great deal forwarder in your absence?—Yes.

The room had been taken, I think?—Yes, the room at the White Hart had been given up, which I did not know on the Monday morning, nor did I know of the room having been taken at Brunt's? I did not go to that room, but to speak to Brunt's wife.

You have told us of a meeting on the 3rd of February, you call it the 2nd to-day; was Edwards at that? I do not wish to raise any thing on the difference of date; the other day when you were examined did you say any thing about Ings pulling a pistol from his pocket and saying, he hoped the king would not die then, and that the duke of York would not come to the crown?—I did not; if you question me here you will bring a number more things to my mind; as I have pledged myself to my Maker to divulge all I know, I will tell it.

And the more you are asked the more you will know?—Undoubtedly.

You have told more to-day than you did the day before?—I told all I recollected.

But this curious idea of Ings, saying he hoped the king would not die then, but would live a little longer; and that the duke of York would not come to the crown, and that the king should never wear the crown, you did not state?—No, I did not recollect it.

You have told us that Ings, who happens to be the man before the jury, said they were all a damned set of cowards; that he took a pistol in his pocket when the prince regent went to parliament, with the sole intention to shoot him; that on his making use of that expression, he took the pistol from his pocket to convince them of the sincerity of what he had said, and exclaimed, "There is the pistol that I took," and that he regretted he had not done it, saying, had he done it he had not cared a damn for his own life; all that remarkable fact you kept to yourself on Monday last?—The reason why I kept it to myself was, that it did not

come to my recollection: the words I have said this morning were all fact.

The reason you did not state it on Monday was, that it did not come to your recollection?—It did not.

I think you told us some things then, that did not come to your recollection to-day?—That may be. I will not pretend to say, that the next time I come up here I can communicate every thing as I have done to-day.

Certainly not; there are people that proverbially ought to have a good memory?—Yes, certainly.

You told us of their being to go to Brighton and Margate and Dover, and take possession of the outports; you have not told us that to-day?—I do not consider it necessary: if it had struck me, I would have mentioned it.

You make your evidence a little longer or shorter, according as the occasion suits?—Yes, I mention the circumstances as they come to my recollection.

On one day it is, that the king is to live a little longer, and on another day the ports are to be taken possession of?

Mr. Gurney.—That is observation, and not question.

Mr. Adolphus.—I am asking him a question.

Mr. Gurney.—But that is not a question.

Lord Chief Justice Dallas.—You should not now observe on the evidence.

Mr. Gurney.—Your lordship knows that we shortened his evidence the other day, and passed over various circumstances.

Mr. Adolphus.—You could not stop him; you tried several times. This about the digging entrenchments you did not state on Monday?—No, I forgot that.

The next time there will be a new story?

Mr. Gurney.—I must interpose, my lord.

Lord Chief Justice Dallas.—All these observations are certainly incorrect.

Mr. Adolphus.—He has said it himself; “when next I come into the box, I shall recollect other things,” and upon that I put the question, whether he would tell another story the next time he comes.

Lord Chief Justice Dallas.—Ask him the question if you wish it.

Mr. Adolphus.—Shall you tell us a new story the next time?—No. If any thing new occurs to my mind when I come to stand here, I will state it.

There is another little fact you had not mentioned before, that the assassination must take place before the parliament was dissolved?—Yes.

That did not occur to you on the former occasion?—No, it did not. I recollect it perfectly well.

You have omitted something you told us last

Monday, that at the meeting on Wednesday the 3rd of February, Brunt said he had work to finish, and could not go about the assassination the next day?—I stated that on the 19th of February.

Did you not state that that happened on the 2nd or the 3rd of February which ever was the day?

Lord Chief Justice Dallas.—What do you refer to?

Mr. Adolphus.—Brunt saying he had business to finish, and could not go the next day. Upon your oath, did you or not say that that took place on the 2nd of February?—I stand here upon my oath already. I conceive that as such, I said, and I say now, that Brunt being asked by Thistlewood to call on his men, said, he had work to do, and did not know that he should be able to attend; this was on the 19th.

Did he or did he not say so on the 2nd?—I do not remember his saying so.

Did you say on Monday last, upon your oath, that he said so on the 2nd?—If such a word dropped from my mouth, it is past my recollection.

Mr. Adolphus.—I am convinced I was mistaken in that, the date was written narrowly in the margin, and I overlooked it. This meeting on the 19th was when twelve persons were present?—No.

That was the 20th, the Sunday?—On the 20th; before they all left there were fifteen.

That was at the time Tidd took the chair with a pike in his hand?—Yes.

They did not then know of the dinner at lord Harrowby's?—No.

Their plan then was, to go to the houses of cabinet ministers, and kill two or three, or four of them?—Yes.

And then they were to take the cannon and do all the rest of the work?—Yes.

You have given us this addition to-day, that the cannon were to be loaded on the ground, and brought out to fire on any who opposed them; but that if Cook found himself strong enough, he was to make for the Mansion-house, and to secure that for the provisional government; all that you have told us for the first time to day?—If I recollect right, the major part of that was stated by me on Monday.

Was there any thing about the cannon being loaded on the Artillery-ground?—I will not go so far as to swear that I did state that.

Did you say any thing about Cook summoning the Mansion-house, and demanding it to be given up?—If I did not, I forgot it.

Bless me, cannot you remember from Monday? Those things you are speaking of were three months ago; is your memory worse since you took to Christianity?—No, my memory is strengthened.

Did you state that on Monday?—I stated that Cook was to demand the Mansion-house, and in case it was not given up, he was to fire upon it.

Or did you say it was to be summoned, or demanded to be given up, or not?—Certainly.

You said that as having happened then, did you?—I consider summon and demanding as two similar things. I do not know whether I am right or wrong.

I mean them as the same thing: to pass that we will come to the meeting on the 22nd; was that the time when Ings pulled three daggers out of his pocket?—Yes.

He said they were to run into one of their bodies, using an expression that you very properly kept back?—Yes.

Why did you not tell us that on Monday?—When I was here on Monday, if I was to state the whole, and give the whole, I should be able to state it; but for me to come here and select one single individual out of thirteen, it confuses me, it put a stop to my recollection.

Ings was at the bar on Monday, though he was not on trial on Monday; why did you not tell us that then?—If I had thought of it at the time I would have mentioned it.

It was then that the watch was agreed on?—Yes.

To be on duty from six in the evening till midnight?—Yes.

And a committee was to sit twice a-day; at eleven in the morning, and seven in the evening?—Yes; on the Saturday it was eight that they met, at nine o'clock on the Monday.

How long did your committee meetings last?—There was never no regular time.

Did they ever sit till 12 o'clock at night?—I never saw them sitting at 12 o'clock at night.

You have told us further that at the meeting on the 23rd or 22nd, Brunt said he had left Tidd to meet a man that would be of great consequence, and therefore he could not go to the watch, and you were to go, and Brunt and Edwards and you proceeded to Grosvenor-square, and there saw Davidson?—Yes.

Why did not you tell us that on Monday?—I did not consider, according to the dictation of counsel I had, that I had a right to tell that.

"I did not consider according to the dictates of the counsel" that examined me, how am I to understand that?—There were things that transpired on the 22nd, that I have not stated either last Monday or to-day.

This was one of those you did not state last Monday, but have stated to-day?—Those things I have not stated to-day.

But this as to Brunt's meeting a man you knew last Monday?—That was not in Mr. Thistlewood's proceedings.

You mentioned as being parties to that, Brunt and Tidd, and Edwards, and yourself, and Davidson?—This was proposed on the Monday morning, the Tuesday morning I mean, the question was asked whether Tidd,—

Did you state that on Monday or did you not? Did you say on Monday that Brunt said he had left Tidd to meet a man that would be of great consequence, and therefore he could not go on the watch?—Brunt said that on Tuesday.

Did you say that on Monday last here?—That I will not pretend to say.

We will go over a good deal at once: you are quite sure that when you came to Cate-street, twenty was the number of men there?—I took that from the statement of Thistlewood, I did not count them myself.

That there were eighteen above and two below?—Yes.

Do you know a gentleman of the name of Monument?—I never saw Monument at all, not to my recollection, not to know him by name.

Perhaps you can tell me the room is fifteen feet one way and ten the other?—I do not know the width.

Is that about a true description of it?—I should suppose it might.

Were you all pretty close together in that room, all you eighteen?—Not at the time the accident happened, the murder, I kept my standing where I was.

Where was that?—At the end of the bench under the window.

Was that nearest or furthest from the door?—Furthest from the door.

Was that nearest to the smaller room where those parties retired into?—That I cannot positively say, for I never observed the door till that moment.

You said you saw the party come, in a group, from that room?—Yes.

Was it near that?—That door appeared to me to be in the middle of the room.

Therefore the bench would be near it?—No, the door is in the side of the room, the bench stands lengthways.

Were you at the end nearest to or furthest from that room?—I never pretended to say the distance of that door from where I stood, and cannot.

Then you were nearly in the middle of the room?—I was at the end of the room.

The end nearest to the ladder, or the other?—Nearest to the street.

You could see all that was in the room?—Do you mean to ask me every thing that was in the room?

I do not ask you for an inventory of the things in the room, but you could see every thing?—Yes.

How many candles were there in the room?—One.

Only one?—One I will be answerable for; whether there were more I will not take upon myself to say.

Were there three or four?—I can be answerable for one, I can be answerable for no more.

You can answer whether they were there or not?—I did not see them.

At any time were there four candles lighted?—I never saw but one.

You can tell whether there were more or not?—I did not see them.

Were there more than one candle in the room at any one time during the time you were there?—If there were it was the time when I was out of the room.

When was that?—When I went down into the stable with Thistlewood.

Were there more than one?—There was not more than one.

If any man swears there were eight, he swears that which is false?—If he speaks the truth.

And a man that speaks the truth will not say there were eight candles in the room?—If any man swore there were eight candles in the room, I will swear he was a false man.

That one candle was put out, and it was all dark then?—As soon as ever the pistol fired it was all in a state of darkness.

Very good. I want to know which of the officers made a speech on coming into the room?—Not knowing the officers by name, I cannot say.

Should you know the gentleman again if you saw him?—I do not know that I should.

But it was one of the first men that came in?—Yes.

He used those words?—Yes.

And to those words you are quite positive?—To the best of my recollection those were the words.

I do not want to trap you in one word, or the turn of a word, but that one of the officers who came in said, "Here is a pretty nest of you?"—To the best of my recollection those were the words.

Or, "here is a fine nest of you," or something of that kind, "pretty" or "fine," or whatever it might be?—Yes.

You are quite sure a phrase of that kind was used?—Yes.

You are quite sure that this same officer said, "Gentlemen, we have got a warrant to apprehend you all?"—Yes, that was the expression.

And that you swear to?—I will be answerable for an expression of that kind.

"Gentlemen, I have a warrant to take you all, or to commit you all," or something of that kind?—Yes.

That you swear?—Yes.

And added "as such you will go peaceably, we hope?"—Yes.

Those were the words that were used by the officer?—Yes.

If any man has said that they only said "We are officers, seize their arms," that man must be a false man, must not he?—If such a word as that passed, I cannot charge my memory with it.

If any one has said that passed, and that only, he must be a false man?—Do you suppose it is possible for me to stand here and say I will be answerable for every word that passed, or even every transaction?

No, certainly; that is not my question; but you are certain that those words you have spoken to did pass?—Yes.

Mr. Edwards was the aide-de-camp to this business?—I always found Mr. Edwards seemed to be very deep in it, and very much in conversation with Mr. Brunt and Thistlewood.

And you gave him the title of aide-de-camp just now?—I gave him the title perhaps, but that was not the word that passed at the time.

No, so I understood, that that was a term you yourself applied to him. You used the expression. You went home after this affair, as quietly, as unabashed, as if nothing was the matter?—To outward appearance.

You did not tell us last time of the pistol being fired?—I did not think of it at the time, nor when I was taken did I think of it that it was fired at me, but in the coat I had on, there was a hole where the ball went.

But you did not think of that when you were taken into custody, nor on Monday?—There were several things that I have not stated to-day; when I come up again I will state them if they occur to me, and if they concern the prisoner. There are things I have stated to-day that did not exactly concern the prisoner on trial: those are the very grounds on which I omitted stating some things. I do not want to fix the guilt of another man on the prisoner on trial.

Certainly not, therefore I suppose he was the man that fired the pistol at you?—I do not know.

You have mentioned it to-day, and not on the former day: you are cautious of fixing any one, I see. Is that the great coat you had on at the time?—No, it is in the room I sleep in.

Has that ever been produced to show the shot-hole?—No, I did not find it out myself at first, but Maidment, the officer.

Do you know a person of the name of Chambers?—No, not that I recollect.

Thomas Chambers. Did you ever call on such a man, in company with Edwards, in Heathcock-court?—No, never in my life.

That you swear?—Yes, that I swear: nor do I know where it is.

You never called on any person of that name, nor do not know that person?—No.

Did you call on any person in company with Edwards, about three or four days before this affair in Cato-street took place?—Edwards went along with me in order to buy a pair of boots that a woman had to sell; that was the only time of my being in his company privately, that was on the Monday.

Where did you meet?—He called on me at my lodgings.

Did you call on any body?—No, we called in at a wine-vaults at the corner of Newport-market, and he treated me with a small glass of rum.

Did you ever call on any person along with Edwards to solicit him to join a party to kill his majesty's ministers?—Never in my life.

And say that you would have blood and wine for your supper?—Never: if any person comes to swear that, they will perjure themselves.

Whether they are converted to Christianity or not?—Yes.

Did you call on such a person twice?—I never called on any person in company with Edwards.

Do you know a person of the name of Stephen Whatman?—I do not.

I am going back three years; did you know such a person at that period?—I do not know that ever I did in my life.

Three years ago, that would be 1817?—I was then in France.

How long have you been returned from thence?—Two years the 10th of next month to London.

Had you, at any time, a conversation with a man living in Kingsland-road about the Tower, and using Cashman as a watch-word?—I had nothing to do with Cashman's concern.

Did you ever tell any person to speak about the Tower, and to use Cashman as a watch-word?—Never in my life.

After this affair was over in Cato-street, did you take any ammunition back any where?—No, after I left the room; I will tell you the last time I had any ammunition in my hand. I am going to state a thing I have not told before. Hall was the man that brought me a pistol, and brought me five rounds of ball-cartridges. I loaded the pistol, and laid it on the end of the bench next to me, and there lay the pistol when the officers came into the room. I have never handled a pistol since; and the four rounds of ball-cartridges I had left, after I loaded the pistol, I threwed them away in the room as I came out.

Had you to carry the large grenade?—I never had it in my hand. I saw it.

Did you carry it back to Tidd's the day after?—If you will believe me what I am about to say, here is the fact. I went home on the Wednesday night. I got home about nine o'clock; never did I lay my hand on the latch of the door to go out of it till I was taken by the officers.

Did you ever carry that hand-grenade any where?—I never took it up, nor saw it any where but at Brunt's. I can tell you as far as this; I believe I carried some pikes from that room of Brunt's up to Tidd's, this thing has never come out yet; there are a number of things I have not stated yet.

You never carried the hand-grenade at all?—No; if you wish to know the principal part of them, I can tell you.

I do not wish to know. Mr. Edwards, I think, was the engineer? he made the fuses?—He was making the touch-paper for the fuses that were put in; he was drying them by the fire; my time was too short in the room at that time to see more.

You have not told us what Edwards said at any of those meetings; one said one thing, and one another; what did Edwards say?—I cannot pretend to charge my memory that Mr. Edwards was a man that I ever can charge my memory with a score of words that the man said; he had very little to say, and what he had to say to Mr. Thistlewood and Mr. Brunt, and Harrison, it was always in a side-winded kind of way whispered to them.

You never heard from Edwards since you have been in confinement?—Never.

You forgot to tell us the story about the one-pound note to treat the men, you told us on Monday?—I had nothing to do with that to-day; it does not belong to this man's crime; I suppose I shall not have to state all the things every time; if I thought I should I would prepare myself.

You told us about six shillings, and one shilling, and seven-pence; that was all the money you ever saw: by whom were they given?—The six shillings was given by Thistlewood to Brunt.

What was the one shilling done with?—I have not stated that to my knowledge.

The paper that Edwards mentioned the dinner in was the New Times, was not it?—Yes it was.

That was the paper that was brought and contained the article?—Yes, I dare say you will find it in the New Times of February the 22nd.

I see the last question put you on cross-examination was, whether you knew who put the candle out, and you said you did not?—I do not.

There was but one candle?—There was but one candle; and that candle, as soon as ever the pistol was fired, went out; and, as I said, whether the candle was put out intentionally, or the report of the pistol put it out, I cannot tell.

Eleanor Walker sworn.—Examined by Mr. Gurney.

I believe you are the niece and the servant of Mrs. Rogers, No. 4, Fox-court, Gray's-inn-lane?—Yes.

Do you know the prisoner Brunt?—Yes.

Did he lodge at your master's house?—Yes.

Had he lodged there many months before last January?—He had lodged there about a twelvemonth as nearly as I can recollect.

What rooms did he occupy?—Two front rooms.

On the two pair of stairs floor?—Yes.

In the month of January last do you remember his introducing to you any other person to take a lodging?—Yes.

Who was that?—He did not tell me the name.

Did you afterwards find what the name was?—No, I did not know it till I saw his name in the paper; then I found it to be Ings.

Was that the man at the bar?—I cannot say.

Do you believe that to be the man?—He appears to be something like him, but I cannot swear to him.

Did Brunt tell you in his presence what he was?—No, he did not.

Did he tell you what he was?—No, neither of them.

What was the rent of the room?—Three shillings a-week.

Unfurnished?—Yes.

Do you remember for how many weeks he had the room?—A month or five weeks.

When he took it, did he say any thing about furniture?—He said he perhaps might bring in his goods in about a week or better.

Was this the two-pair of stairs back room?—Yes.

Elleanor Walker cross-examined by
Mr. Curwood.

What part of the house did you live in?—The lower part.

Was that far from the staircase?—It was near the staircase, but the door was always shut.

Could ten or twelve men meet once or twice a day without your knowing it?—I did not know it.

Was it likely ten or twelve men could go up once or twice a day without your hearing it?—I might hear it; I have heard persons come up and down stairs, but I did not see them.

As many as ten or twelve at a time?—No, I never heard that.

Ten or twelve in the morning?—There might have been, but I did not hear them.

Elleanor Walker re-examined by Mr. Gurney.

Is there a door by which the lodgers go up without going through your shop?—Yes.

Is that a front door into the court?—The shop door is in the court, and the private door in a passage.

And that leads to the staircase?—Yes.

Is there any back door besides?—There is only one back door.

Is there a back door?—Yes.

Do you call the door at which the lodgers come in, the back door?—Yes.

That is a door coming out of a passage on to the stairs?—Yes.

And they came in at that door without coming into your shop at all?—Yes.

Mary Rogers sworn.—Examined by
Mr. Gurney.

Elleanor Walker is your niece and servant we understand?—Yes, she is.

You remember the circumstance of her letting your two pair of stairs back room in January last?—I do.

How many weeks did this person occupy it?—Four or five.

How many did he pay for?—Four, and there was one left unpaid.

Was the lodging kept till Brunt was taken up?—Yes.

During the four or five weeks did you ask Brunt any question as to who the lodger was?—I did.

Did he tell you of what business he was?—He told me he was a butcher out of employ.

Did he tell you what he knew of him?—He said he knew nothing of him, only seeing him at the public-house, and hearing him inquire for a lodging.

Do you remember one evening when you were putting your children to bed, seeing any men upon the staircase?—I do.

How many men did you see?—Three.

Were they going up stairs or going down?—

Going up stairs.

Was there any thing remarkable in the person of either of the three?—The middle man was a black man.

I do not know whether you took sufficient notice of him to identify him?—No.

Joseph Hale sworn.—Examined by
Mr. Gurney.

Are you apprentice to Brunt?—Yes.

Did you live with him at his lodging in Fox-court?—Yes.

We understand he had the two front rooms, two pair of stairs?—Yes.

One to live in and the other to work in?—Yes.

Do you know the prisoner, Ings?—Yes.

Do you remember his taking any room in that house as a lodging?—Yes.

What room was that?—A two-pair of stairs-back room.

Had you seen him in company with Brunt before the day on which he took that lodging?—Yes.

Where had you seen him?—In Brunt's workshop.

How long before he took the room?—About a fortnight; the first time I saw him in Brunt's room.

Had you seen him more than once before he took the room?—I believe I had.

At the time the room was taken, did Ings look at the room alone, or did any person look at it with him?—Brunt looked at it with him.

Did you hear either of them say any thing while they were looking at the room?—When they came out of it, I heard Brunt say to Ings, "It will do, go and give them a shilling."

Do you remember what day of the week that was?—On the Monday.

That evening did Ings come there?—Yes.

Did any person come with him?—Yes.

Who was that?—A man of the name of Hall, a tailor.

How did Ings get into the room?—He came and asked Mrs. Brunt for the key.

Did she give him the key?—I believe she did.

Did he and Hall go into the room?—Yes.

Did you hear any other persons come into the room that evening?—Yes, there were others.

From that time, until your master was taken up, did persons use to come to that room?—Yes.

At what part of the day had you an opportunity of observing that they came?—In the evening.

Had you done work generally at that time?—No.

Can you give me the names of the persons who used to come to those meetings in the evening?—Yes; Thistlewood, Ings, Davidson, Bradburn, Tidd, Edwards, Adams.

Do you remember Hall?—Yes.

Did he come?—Yes.
 Do you know a man of the name of Potter?
 —Yes.
 Did he use to come?—Yes.
 Do you know Strange?—Yes.
 Did he use to come?—Yes.
 Was there any furniture in the room?—No.
 How did they manage for furniture when they came to those meetings?—They used to borrow Brunt's chairs to sit on.
 Did your master go in in the evenings too when they were there?—Yes.
 Did you see those persons, or any of them, in your master's room, besides seeing them in this room?—Yes.
 Did they call each other by their names?—Sometimes.
 By what name did they generally call Thistlewood?—Sometimes T, and sometimes Arthur.
 Do you remember, any day, seeing the door open, and observing any thing in the room?—Yes.
 What did you see in the room?—I saw some long poles like the branches of trees.
 Have you at any times heard any work going on in the room?—Yes.
 What kind of work?—I have heard them hammering and sawing.
 Your master was taken up, I believe, on Thursday the 24th of February?—Yes, he was.
 On the Sunday morning before that, was there any meeting in that room?—Yes.
 Were the persons whom you have now named to me present at that meeting?—Yes.
 Were there any others there besides those?—Yes.
 Was that a large or a small meeting to the best of your recollection?—A larger meeting than what there usually was.
 Did they go away all together or one or two at a time?—One or two at a time.
 Was your master in the room with them?—Yes he was.
 After the meeting was over, did you see any body in your master's room in company with your master?—Yes; Strange.
 Had he been at the meeting?—Yes, he had.
 On Monday evening was there a meeting?—Yes.
 On Tuesday evening was there another?—Yes.
 In the course of Wednesday did any number of persons come?—There were several persons came up at different times.
 At the different times, how many persons can you speak to having seen or heard come up?—I cannot say how many; there were several, but I cannot say how many.
 At what time in the day did they come?—Some in the morning and some in the afternoon.
 Do you remember any of them coming into your workshop?—Yes.
 Who were they?—Strange, and a man that I do not know.
 At about what time of the day was that?—At about two o'clock.

What did Strange and this other man do?—They were flinting some pistols.
 How many?—Five or six.
 Did they finish flinting them?—No.
 What prevented their finishing them?—One of the men said there were persons overlooking them, and Brunt told them to go into the back room.
 Persons overlooking them from what place?—From the opposite houses.
 From the windows of the opposite houses?—Yes.
 Did they then go into the back room?—Yes, they did.
 Was Brunt in the back room much of that day?—Yes, he was in several times.
 Did you see Thistlewood there?—Yes.
 At about what time?—About four o'clock.
 Did he ask you for any thing?—Yes.
 For what?—For a piece of writing paper.
 Did you give him some?—Yes.
 To what place did he take it?—Into the back room.
 After that did any person come out of the back room and tell you to do any thing?—Yes.
 Who was that?—Brunt.
 What did Brunt tell you to do?—To go and get some cartridge paper.
 How much?—Six sheets.
 What money did he give you to pay for it?—Six pence.
 Did you go and buy six sheets?—Yes.
 To whom did you give them?—To Brunt.
 To whom did he take them?—Into the back room.
 After this did any of them go away?—Yes.
 Did any of them go into your master's room before they went away that you remember?—Yes.
 Who was that?—I do not know the man's name.
 Did your master go away?—Yes.
 About what time?—At about six o'clock.
 After Brunt your master was gone, did you do any thing respecting your mistress's tea?—Yes.
 What did she want for the purpose of making tea?—She wanted the table.
 Where was that table?—In the back room.
 Did you, at her desire, knock at the back room door and ask for it?—Yes.
 Who answered you?—A man by the name of Potter.
 Did he give you out the table?—Yes.
 Upon the opening of the door did you see whether there were other men in the room besides Potter?—Yes.
 How many?—four or five, I cannot be certain which.
 Was there a fire there?—Yes.
 In the course of that evening, did you see the prisoner Tidd?—Yes.
 Where did you see him?—He came to Mrs. Brunt's room.
 Upon his coming there, what passed between him and Mrs. Brunt?—She took him to

the cupboard and showed him a pike head and a sword.

What did she say?—She asked him what she could do with them.

What did he say?—He told her to give them to him, and he would take them away.

Did he take them away?—He did.

I do not know whether you have told me about what time that was?—Between seven and eight.

Did you see where he went to?—He went into the back room.

After that, did you hear any persons go down stairs?—Yes.

Did any person come into your mistress's room and deliver any message to her?—Yes.

What message?—A person came and said if any persons came and inquired they were to be sent to the White Hart.

Shortly after, did any persons come?—Yes. How many?—Three.

Did your mistress direct them to the White Hart?—They did not know the way to the White Hart, and I went and showed them the way. When you came back from the White Hart, did you find Potter there?—He came while I stood at the door.

Did you tell him the same?—Yes, I did.

Did he go, on your telling him?—or did you show him the way?—He went, on my telling him.

He did not require you to assist him in finding it?—No.

At about what time did your master come home?—About nine o'clock.

Was there any difference in the condition of his dress from what it had been when he went out?—Yes.

What was the difference?—His boots were very muddy and the tail of his coat.

Did he appear composed, or otherwise?—No, he seemed rather confused.

Did you hear him say any thing to his wife about what had happened?—Yes.

What did he say?—He told his wife it was all up, or words to that effect.

What more did he say?—He said that where he had been there were a lot of officers came in.

What more did he say?—Just as he was saying that, a man came in.

Did he say any thing about his life?—He said he had saved his life and that was all.

Do you know the name of that person who came in?—No, I do not.

What passed between them?—He shook hands with him, and asked him if he knew who had informed.

What answer did the man give?—He said no.

Did the man say whether any thing had happened to himself?—Yes.

What did he say?—He said he had had a terrible blow on the side, and was knocked down.

Did you judge from the maner in which they spoke to each other where they had been together?—Yes.

After that did Brunt say any thing?—He went away.

As he was going away, do you remember what Brunt said?—He said there was something to be done yet.

And they went away together?—Yes.

When they were gone, did your mistress and you go into the back room?—Yes.

What did you find there?—There were several things in the cupboard.

Was there any thing that was not in the cupboard?—Yes, there was a long pole that stood in the corner of the room.

What was there in the cupboard?—Several rolls of brown paper and tar.

Any other things?—Yes, some round balls made with string and tar all over them.

What do you understand them to be?—I have heard since that they are hand-grenades.

They are tied over with rope-yarn?—Yes.

Were they the things which the officers found the next morning?—Yes.

Mr. Gurney.—You will see them hereafter, gentlemen. Was there any Iron pot in the room?—Yes.

To whom did that Iron pot belong?—To Brunt.

Any flannel bags?—Yes.

Full or empty?—There were two of them full of something.

Were the things left there?—Yes.

Did your master come home again?—Yes.

At about what time?—About eleven o'clock.

Did he give you any directions what to do in the morning?—Yes.

What were they?—He told me to get up as soon as I could, and clean his boots.

In the morning did you do so?—Yes.

After you had done that, did your master ask you any question?—Yes.

What?—He asked me if I knew the Borough. I told him yes. He asked me if I knew Snow's-fields. I told him no.

Did he then give you any directions how to find Snow's-fields?—Yes.

Did he tell you to whom he wanted you to go there?—Yes, he told me I was to go to Potter, Kirby-street, Snow's-fields.

After that, did he take you into the back room?—Yes.

Did he desire you to bring any thing there?—Yes, a rush basket.

Was there any other besides the one you took?—Yes.

Who took that?—Brunt.

Did he tell you what to do with respect to those baskets?—Yes, to put those things into the baskets.

The things you had seen the night before?—Yes.

Did you put the things which you had seen the night before into the two baskets?—Yes.

Was any thing then done with respect to either of the baskets?—Yes, one of them was tied up in a blue apron of Mrs. Brunt's.

To what use had that blue apron been before

applied?—It had been used as a curtain to the window of the back room.

Was the other tied up?—No.

How happened that?—Brunt went into his own room to look for something to tie it up in, and two officers came in.

Two police officers?—Yes.

And they apprehended him?—Yes.

I am not sure whether I asked you as to the number who met there on the Sunday: can you speak to the number?—There were about twenty, I think.

Joseph Hale cross-examined by Mr. Carwood.

I think you told us on Monday or Tuesday, that when you found the brown paper, you found some pieces of cartridge-paper along with it?—One piece of cartridge paper.

Were not you surprised at those meetings?—Not particularly.

Of course, perhaps you knew what they were about?—No.

Were not you surprised when you found meetings, and their having arms together there?—I never saw any arms except in Brunt's room.

You saw them putting some flints into pistols there?—Yes.

Had not you any knowledge what that was for?—No.

You knew nothing about it?—No.

Were you ever in a court of justice before?—No.

Were you ever before a magistrate?—Never till I was examined about this business.

Never about any business of your own?—No, never.

Thomas Smart sworn.—Examined by Mr. Littledale.

I believe you are one of the watchmen of the night in the parish of St. George, Hanover-square?—Yes.

Do you remember, on the night of Tuesday the 22nd February last, being on watch?—Yes, perfectly well.

Were you on watch in Grosvenor-square?—Yes.

Did you see any people there that attracted your attention?—I saw four people, very suspicious characters.

At what time?—About half-past eight, or a quarter before nine.

Was one of those people a man of colour?—One man was a man of colour, and there was a tall man along with him.

You say they were suspicious looking people, what were they apparently doing?—Peeping down the areas, and watching as if they were about no good.

What time did you leave your watch?—Seven o'clock in the morning.

Was Bissix a watchman at the time with you?—Yes, he and I met every half-hour at the end of our round, and I told him there were four suspicious characters, and to keep a look out after them.

Charles Bissix sworn.—Examined by Mr. Littledale.

Are you one of the watchmen of St. George, Hanover-square?—Yes, in Grosvenor-square.

Do you remember seeing any body that attracted your attention on the 22nd of February?—On the 22nd, as I was calling "half-past eight," being then at the end of my call, and therefore about a quarter before nine, on the same side on which lord Harrowby lives, there were two men passed me, one a dark man.

Do you mean a man of colour?—Yes, it was a little darkish, within about a quarter of nine, and he asked "watchman, is it almost nine o'clock," that is the dark man, I said, "it is not nine yet, but within a few minutes of it;" that was the answer I made.

Henry Gillan sworn.—Examined by Mr. Bolland.

Do you live at No. 15 Mount-street, Berkeley-square?—Yes.

Do you ever use the Rising Sun public-house?—Yes.

Where is that?—The corner of Charles-street, and Adams-mews.

Do you recollect being there any night, and playing at dominos?—Yes.

When was that?—On Tuesday the 22nd of February.

With whom did you play?—With Brunt.

What time of the evening was it when you first saw him?—Between nine and ten o'clock.

Had you been in the public-house before he came?—Yes.

He came in between nine and ten?—Yes.

Was he alone or in company?—There was another man with him.

Had they any refreshment?—Yes.

What?—Some bread and cheese and some porter.

How long did you play at dominos?—About half an hour.

Did you leave the public-house before they went, or did they go first?—I left first.

What time did you go?—About ten o'clock I think it might be.

Henry Gillan cross-examined by Mr. Carwood.

How do you know it was the 22nd?—By the list I have when I carry out medicines.

Have you that list with you now?—No.

That is the only recollection you have of it?—Yes, it is.

John Hector Marison sworn.—Examined by Mr. Bolland.

Are you journeyman to Mr. Henry Thomas Underwood?—Yes.

He is a cutler?—Yes.

Where does he live?—In Drury-lane.

Were you with him at Christmas last?—Yes.

Do you remember at Christmas last any person bringing you a sword to sharpen?—A

person brought one on Christmas-eve to be ground.

How was he dressed?—He was dressed like a butcher.

Should you know the person of the man?—Yes.

Look at the prisoner, and say whether he was the man?—That is the man.

Did he call again for the sword?—He called three days afterwards for the sword, and paid me nine-pence for doing it.

Did he give you any particular directions about the first?—Yes, to grind the point particularly sharp, and to make it cut both back and edge.

Do you mean the point?—Yes.

Was that a cut and thrust sword, or a sabre?—A very short sabre.

You did according to the directions?—Yes.

Did he bring you any other work?—Yes, about a fortnight after another sword, a very long one, a sabre; he told me to grind that as I had done the first.

Did he give any name?—It is customary for us to ask the name, and to the best of my recollection he said Eames; it might be Inga.

Edward Simpson sworn.—Examined by *Mr. Bolland.*

Are you a corporal-major in the second life-guard?—Yes.

Do you know a man of the name of Harrison, one of the prisoners?—I know a man of the name of John Harrison.

Was he formerly in your regiment?—Yes, he was.

Do you know whether Harrison was ever on duty at King-street barracks?—Yes, I am certain he was.

How long was he there?—In the regiment?

No; at those barracks?—I cannot say exactly.

Was he there time enough to know the state of them, and where the different things were kept in the rooms?—Yes.

Would his duty make him well acquainted with them?—Yes, perfectly acquainted with them.

Do they join upon Gloucester-mews?—Part of them do.

Are there any windows looking to the Mews?—There were formerly.

How long have those windows been stopped up?—They were stopped up two or three days after the affair of Cato-street.

Was there any straw or hay or other combustible matter in any rooms communicating with those windows?—There was straw in the room communicating with the window and hay likewise.

If fire had been thrown into those windows and communicated with the straw, would the consequence have been the destruction of the barracks?—Most undoubtedly it would.

James Aldous sworn.—Examined by *Mr. Bolland.*

I believe you are a pawnbroker?—Yes.

Where do you carry on your business?—In Berwick-street, Soho.

Do you know the prisoner, Davidson, the man of colour?—Yes.

Did he, at any time, pledge with you a brass-barrelled blunderbuss?—Yes, he did.

Did he leave it with you, or take it out of pawn?—He redeemed it.

When was that?—On the 23rd of February.

At what time of the day?—In the morning.

Did he say any thing to you at the time he took it out?—No, he did not.

You have seen that blunderbuss again?—I have.

Did you see it in court the other day?—No, I have not.

You have seen it at Bow-street?—No, I saw it at Portman-street barracks.

Who showed it you?—Mr. Ruthven.

Thomas Hiden sworn.—Examined by *Mr. Gurney.*

I believe you have carried on the business of a cow-keeper and dairyman in Manchester-mews?—Yes, I have.

Do you know a man of the name of Wilson?—I do.

The prisoner?—Yes, the prisoner at the bar.

Had you known him some months before last February?—I had.

Shortly before the 23rd of February, did he make any proposition to you?—He did; he met me and asked me if I would be one of a party who were going to meet to destroy his majesty's ministers.

To destroy them where?—He told me they had got such things as I never saw, and that they had got all ready and were waiting for a cabinet dinner.

Did he say what those things you had never seen were?—He said that some of them were made of tarpaulin, and some of tin, bound round with cord, and that their strength was such, that if it was set fire to, it would heave up the walls in front of the houses where we were walking.

Did he say what they were for?—He said it was to destroy his majesty's ministers; that they were waiting for a cabinet dinner, and when there was a cabinet dinner they would let me know; and he said they were to light up some fires.

Did he say where?—He said I had no cause to be alarmed.

Did he mention any names of persons?—He mentioned some houses, he mentioned lord Harrowby's, the duke of Wellington's, lord Sidmouth's, lord Castlereagh's, the bishop of London's, and one more that I do not know; he told me that I had no occasion to be afraid, that there was a gentleman's servant who had furnished them with a certain sum of money, and if they would act upon the subject he would give them a considerable sum more.

Did he say any thing as to what would be the effect of lighting up the fires?—He said, from the lighting up of the fires, it would keep

the town in a state of confusion; and in a few days it would become general.

Did he tell you what was to be the use of those things such as you had never seen?—He told me they were to be lighted with a fuse and thrown into the room, and all that escaped the explosion were to die by the edge of the sword or some other weapon.

Did he mention to you the name of any person, or offer to introduce you to any person?—He told me, if I would make one of the party which they depended upon me for, that Mr. Thistlewood would be glad to see me.

Did you promise to make one?—I told him I would make one.

Can you tell me how many days this was before the discovery in Cato-street?—I cannot.

Did you go, before that discovery in Cato-street, and give information to any person?—I wrote a note to try to see lord Harrowby and lord Castlereagh.

To whom did you address your letter?—I wrote to lord Castlereagh.

How soon was that, do you think, after you had seen Wilson?—It might be two or three days.

Did you deliver your letter to lord Castlereagh or not?—I did not; I went, but could not see him.

Did you deliver it to lord Harrowby?—I did.

Where did you deliver it to him?—I delivered it to him in Hyde-park, at Grosvenor-gate.

Do you remember the day?—I do not.

On the day of the discovery of the persons in Cato-street, did you see this man, Wilson, again?—I did; he met me in Manchester-street, as I was going home, with a little girl in my hand.

What did Wilson say to you?—He met me and said, "Hiden, you are the very man I want to see." I said, "Wilson, what is there going to be?" He said, "To-night there is a cabinet dinner at lord Harrowby's, Grosvenor-square."

What more did he say?—He said I was to be sure to come: I asked him where I should come, and he said I was to come up to John-street to the Horse and Groom.

What were you to do then?—He told me I was to go into the public house, the Horse and Groom, or to stand at the corner of Cato-street till I was shoved into a stable. I was to meet him at a quarter before six, or by six o'clock.

Did you ask him any question as to numbers?—I asked him how many there were going to be: he said, about twenty or thirty there: I asked him if that was all that was going to be: he said, it was not all, there were to be four divisions; there was a party in the Borough, another in Gray's-inn-lane, another in the City, or in Gee's-court, I am not certain which.

Did he say any thing more respecting Gee's-court?—He said all Gee's-court was in it, but

they would not act unless the English began first, for they had been deceived so many times, they would not begin unless the English began first.

What countrymen do you understand inhabited Gee's-court?—I understand Irishmen; he told me Irishmen; he said all the Irish were in it.

That they would not act unless the English began?—No, for they had been deceived so many times before.

Did he tell you any thing about any place in the city?—He said, after they had been at Grosvenor-square, they meant to retreat to somewhere about the Mansion-house; that was where all parties were to meet.

Did he tell you any thing about what was to be done in other places?—He said there were some cannon they could get very easily, two pieces in Gray's-inn-lane, by knocking in of a small door.

Any thing more than knocking in a door?—Nothing more than breaking in a small door.

Did he mention any other?—He said that there were four pieces at another Artillery-ground, which they could get by only killing the sentry, but I forget where that Artillery-ground was.

Did you promise him to come?—I told him I would come; I was to be sure to be there by six, or a quarter before six.

Did you go to John-street that evening?—I went to John-street, but I was behind my time in consequence of business.

At what time did you go there?—I think it was nearly seven o'clock.

Did you see the prisoner, Wilson, there?—I saw Wilson and Davidson.

Davidson is the man of colour?—Yes, he is.

Where were they standing?—They were standing at the post, the corner of Cato-street.

Do you know Davidson again?—Yes, I had known him a long time before.

When you met there what passed?—They said "you are behind your time." I said, yes, I could not keep it.

Pass over that; what farther did he say?—He asked if I was going in, saying Mr. Thistlewood was there.

What answer did you give?—I told him I could not go in, for I must go and get some cream where I could. I asked him what time they would go away from there.

What did he say?—He told me they would go away from there about eight o'clock, and if they were gone away from there I was to follow them down into Grosvenor-square.

Did he describe the house to you?—He said the lower side, the fourth house from the further corner, that I should find them.

Was any thing more said?—Davidson said "come, you dog, come, it is the best thing you were ever in in your life."

Is that the letter you delivered to lord Harrowby [showing it to the witness].—Yes it is.

Thomas Hiden cross-examined by
Mr. *Adolphus*.

Is this your own writing?—Yes, it is.

How long have you been a cow-keeper?—I have been a cow-keeper these four or five years. I have been a milk-man longer than that.

How long?—About five years.

Before that you were a shoe-maker?—No.

I thought you said you belonged to a shoe-maker's club. I thought by that you were a shoe-maker?—No, I never was.

In what trade were you originally?—I am no trade at all.

What were you before that?—I have been a gentleman's servant, and was brought up to farming in the country.

Five years ago, were you a gentleman's servant?—More than five years ago.

What gentleman's service were you last in?—The last place I lived in was colonel Bridges, in South Audley-street.

How long ago?—I cannot tell.

You must tell me a little better than that?—I dare say it is six years ago.

Cannot you speak more precisely?—It may be seven years.

What number in South Audley-street?—I believe it is 69.

Did he keep house there, or was he a lodger?—A lodging-house I believe it was, but he had the whole of the house.

Whether it was a hired house, furnished by him, or taken furnished you do not know?—No.

How long did you live with him?—No great time; I cannot say exactly.

How long?—It might be a month, or it might be two or three months.

Will you swear it was a fortnight?—Yes, it was more than a fortnight.

Was it three weeks?—Yes it was.

Was it more than a month?—I cannot say; this was my last place of service.

Whom have you ever served for any length of time? I should like to know some place where you had some settlement of abode?—I lived with major Dive, in Tavistock-street, Bedford-square, a year and three months.

In what year?—I think the year 1810.

Is he alive or dead?—He was alive a little while ago.

As what? In what capacity?—As footman, there was only me there.

Did you go directly from him to colonel Bridges?—No, I did not.

Where did you go to then?—I went and lived a little while with a gentleman in Stratton-street, a gentleman of the name of Brice.

For the last five years you have been either a milk-man or a cowkeeper?—Yes.

How long have you lived in Manchester-mews?—Going on of three years.

Have you always lived there the whole of that time?—My family have lived there.

Have you always lived there the whole of that time?—My family have lived there; I have not been at home all the time myself.

How much of the time have you been away from home?—I cannot justly say; two, or three, or four months.

Where do you live now?—I am ever in the Bench now, that is my home now: I am not actually in the place.

Where have you lived? in the Rules of the Bench?—I am not in the Rules of the Bench, I am in the Marshalsea.

In the prison of the Marshalsea?—Yes.

You are not in the Bench, but in the Marshalsea; how came you to say the Bench?—No; I did not say in the Bench, to my knowledge; I did not mean it, however.

Did you not say, just now, that you were in the Bench? look at the jury, and answer?—If I said so, I meant to say in the Marshalsea.

Did you say so or not, I want no ifs.—I am in the Marshalsea.

Did you not say, just this minute, that you were in the Bench?—I cannot say that I did.

Will you, upon your oath, deny that you said so?—No, I cannot say.

You cannot say upon your oath, whether you did or not?—No.

You are in the Marshalsea?—Yes.

For how much?—For about 18*l.* 2*s.* and odd.

Due to whom?—To Mr. Powell.

What is he?—He is a milkman and cow-keeper, I believe.

How long have you been in the Marshalsea at his suit?—I went in last Saturday.

Are you there in execution, or on a bailable writ?—I went in in execution.

How long before that had you been sued by Mr. Powell?—It is some time ago, some time the beginning of last summer; I do not know exactly the time.

How did you keep off going in so long?—I was out of the way for about two months, or from that to three months.

At what period of the year was that?—I do not know at what time of the year it was.

The jury will not be satisfied with that, you must bring your faculties with you?—It may be about June, July, or August.

Was it July or August?—It might be about June, or July, or August, or the beginning of September.

Was it so late as October?—No, I think not, I was home before October.

Upon your oath, were you at your house in Manchester-mews, as you call it, at any time in July or August, except Sundays?—Yes, I was at different times besides Sundays.

Who carried on your business for you?—My wife and my sister.

Do they live there and carry on the business now?—I do not know that they are living there now, but they carry on the business there?

Mr. Gurney.—And my question was, was he living there in February last?

Mr. Adolphus.—Did not you swear on Monday that you lived in Manchester-mews?—I or my family live there.

Did not you state to-day, or on Monday, that you lived in Manchester-mews?—My family.

Do they live there then?—They do live there, or did when I left them.

Did not you say, both on Monday and to-day, that you lived in Manchester-mews?—I did live in Manchester-mews.

Upon your oath, did you or not say, in that place, on Tuesday last, that you lived on that day, in Manchester-mews?—I did not name the day, but I said that day I lived in Manchester-mews.

Did not you answer, being asked where you lived, "In Manchester-mews?"—I am living now in this place where I stand, my family lived in Manchester-mews, me and my family when I was taken away.

Did you not say on Tuesday morning, that your place of residence was in Manchester-mews?—So it was; my family was there.

Will you swear your family or you lived in Manchester-mews on Tuesday morning?—I will swear that my family live there now, for aught I know.

When did you last see any of them?—I saw some of my family there when I left.

Where are they living?—They are living there now; they have the premises; they go backwards and forwards to them.

Who told you so?—My sister told me so to-day, that they go there two or three times a-day, but I do not know that they may be there at this present time.

You mean to refer to the present moment when you give this answer?—You put me to it.

And you live where you stand, and you lived at Manchester-mews, except during the time you are standing here, and the time you are in the Marshalsea?—Yes.

But whether you have any home or abode there at this present moment you do not know?—No.

How long have you known Mr. Davidson, as you spoke of him?—I have known Mr. Davidson for these three or four months.

Do you know a Mr. Edwards at all?—I do not know Mr. Edwards.

You do not know any such person?—No.

Recollect now, try to recollect yourself, do you know Mr. Edwards?—I do not know him.

You know no person of that name?—I know a person of that name.

Then why do you say you do not know him?—I know a good many persons, but they are many miles in the country.

How do you know that I am not inquiring for the very Mr. Edwards you know?—It may be so.

How came you to answer that you do not know Mr. Edwards, and then that you do know Mr. Edwards?—I know a Mr. Edwards 200 miles in the country, but I should not suppose you meant that Mr. Edwards.

Whom should you suppose I mean?—I do not know.

Where did you carry on your business as a

milkman before you went to Manchester-mews?—In Little Durweston-street, by the Edgware-road.

Have you ever frequented the Scotch Arms?—I have been to it twice.

Where is the Scotch Arms?—It is in a small court somewhere down by the Strand.

Did you attend any club or meeting there?—I attended to what they call a club; I was there twice.

With whom?—I went with a friend.

Has that friend a name?—He is a master tailor by the name of Clark.

Why is it called the shoemaker's club?—I do not know, it was called so to me.

It was not a radical meeting, was it?—I do not know what meeting it was, it was reported as a shoemaker's club.

Did politics and affairs of state appear to be the subject of conversation there?—I am sure it is so long ago I do not particularly remember.

How long might it be?—Seven or eight months, but I am not certain to a month.

As you swear so particularly to conversations, was politics the subject of conversation there?—I cannot say, for I am not used to those matters.

Was it, or not?—I cannot say, whether it was or not.

You never saw any of those gentlemen at the bar, except Mr. Davidson and Mr. Wilson?—No.

And you had no conversation about those matters, except with Wilson?—I had some conversation with Davidson.

Where was that? in John-street?—Yes.

That was when you went and were so anxious to get your cream?—Yes, I had seen Mr. Davidson repeatedly before that.

Had you conversed with him about these particular affairs before that?—Yes.

How long was the last time before that you had seen him?—I do not know exactly, it might be a week or a fortnight.

Will you swear it was not more than a fortnight?—I believe I can.

Had you been at any of the meetings at Fox-court, or any thing of that kind?—No, I never was.

Then you did not know any thing of this particular affair till Wilson told you?—Not of that, I did not till he told me.

The cream was, of course, a thing of great profit to you?—It was.

How much did you get by it?—I do not know.

A shilling?—Oh, yes.

Half a crown?—More than a shilling.

By that particular order?—Perhaps, I might gain two or three.

For whom was it?—It was for a family, but I could not state the name.

What family was it?—A family in Princes-street.

Name them?—I do not know their names, but I have served them for three or four years.

What number in Princes-street?—I believe it to be No. six.

Princes-street where?—Princes-street, Cavendish-square.

Are they house-keepers, or lodgers, or what?—They have the house, I believe.

You have served them, how long?—Three years I believe, it may be something more, or it may not be so long; I believe it is about three years.

You do not know their names?—I do not know their names.

And you had an order from them for cream that afternoon which you could not execute?—Repeatedly I have had.

You had an order from them for cream that afternoon?—Yes.

What servant gave you the order? a female or a male servant?—Our people brought home the order, I did not see them.

What people?—My wife.

Did you see any person at the house on the subject of it?—I did not go to the house.

Who informed them you could not get it?—My wife, or my sister did.

You do not know the name?—No, I do not.

Whom do you see when you go there?—I do not serve them, my wife does, I believe they do not keep a man servant.

Were you ever at the house in your life?—Many a time.

What servant have you seen there?—I have seen maid servants.

When were you there last?—I cannot say.

How long before the 23rd of February?—I am not able to say.

Do you serve them daily?—Yes.

This is the family at number six, Princes-street, Cavendish-square?—Yes.

What quantity of cream was ordered for that night?—I really do not know, I have forgot.

And yet you knew that you were to get two or three shillings by it?—We get a shilling a pint.

You are not able to say what was the quantity?—No.

That will not do; we shall probably send there to inquire?—You may do so if you please.

How much cream was ordered for that night?—It has slipped my memory.

You can only remember that you were to get some two or three shillings by it?—I only know I went for cream.

Was it more than a quart?—I believe it was.

I ask you again, was it at not more than a quart?—I am not able to say indeed.

You will not indulge me with the name of any servant in that house?—I am not able.

Do you call the servants Mary, Molly, or Betty, or what?—I cannot say indeed, we have a many without any bill every week.

Was it the first time or second time you met with Wilson that the expression was used, you had no occasion to be alarmed, for there was a

gentleman's servant supplied money?—It was the first time.

Upon your oath, did you not as positively swear, on Tuesday last, it was the second time, on the 23rd of February?—No, I did not say it was the first or second time last Tuesday.

Upon your oath, was not it part of your narrative of the 23rd of February, that he said there was a gentleman's servant supplied money?—He repeated it more than once or twice.

At two separate interviews?—At two different times.

At two different interviews; you met him but twice?—I had seen him many times.

How long had you been acquainted with him before this?—I have been acquainted with him this long time.

How long?—A great while; I met him at a tailor's where I used to go repeatedly.

How long had you not seen him before you met him the first time, when you talked to him on this business?—I saw him a great number of times before, long before.

Was it at any of those times that he told you a gentleman's servant supplied them with money?—He told me when I met him in the street on the 23rd.

Had he ever told you so before?—I do not remember that he had: he said his master was a ministerial man.

Had he ever told you so before those two times?—I cannot swear that he had or had not.

Why did not you tell us on Tuesday that he told you so at the first interview?—I told you that he said so.

That would have been something more to have told Lord Harrowby?—I do not know.

Why did not you tell us that last Tuesday?—He told me so repeatedly.

How many times do you mean by repeatedly?—He told me so twice.

That you call repeatedly?—Yes.

Did you go up into the room in Cate-street, or only speak to Davidson at the door?—I never went into Cate-street, only to the corner of John-street.

Thomas Hiden re-examined by
Mr. Gurney.

Did you continue to carry on your business at Manchester-news till last Saturday?—My family.

Were you then arrested and taken to the Marshalsea?—I was.

Have you remained in custody ever since, except on your coming up here with an officer?—Yes.

As far as you know, do your family remain there still?—They have got the premises now.

About this house, in Princes-street, you said, to the best of your recollection it is No. six; are you positive of that or not?—I think it is No. six.

Your wife generally serves?—She does.

Sometimes you have gone there?—Yes, sometimes I have.

Mr. Adolphus.—My lord, I understood him to say positively it was No. six.

Mr. Gurney.—No, he did not.

Mr. Adolphus.—Will your lordship have the goodness to permit me to ask as to the description of the house, if he will not swear positively to the number?

Mr. Gurney.—I will ask those questions with pleasure: how does the house stand?—I think it is the first door on the left hand side from the square going down to Oxford-street.

Is there any name on the door that you remember?—I do not remember.

The first door from whence?—Going from Cavendish-square down into Oxford-street, on the left hand-side.

The *Earl of Harrowby* sworn.—Examined by Mr. Gurney.

Your lordship is president of his majesty's privy council?—I am.

Is it usual for the members of his majesty's privy council, who form what is commonly called the cabinet, to have dinners at each other's houses?—It is.

In the month of February last had those dinners been interrupted by the death of his late majesty?—They had.

Did your lordship cause cards to be issued inviting the members of the cabinet council to dine with you on Wednesday the 23rd of February?—I did, the latter end of the preceding week.

If nothing had occurred would that dinner have taken place?—Certainly.

Will your lordship have the goodness to enumerate the company who would then have been assembled?—The lord Chancellor; the earl of Liverpool, first lord of the Treasury; Mr. Vansittart, chancellor of the Exchequer; earl Bathurst, secretary of State for the Colonial Department; lord Castlereagh, secretary of State for the Foreign Department; lord Sidmouth, secretary of State for the Home Department; lord Melville, first lord of the Admiralty; the earl of Westmorland, lord Privy Seal; the duke of Wellington, master of the Ordnance; Mr. Canning, president of the India Board; Mr. Bathurst, chancellor of the Duchy of Lancaster; Mr. Wellesley Pole, master of the Mint; the earl of Mulgrave; and Mr. Robinson, president of the Board of Trade.

Fourteen besides your lordship?—Yes.

Are all those whom you have named, my lord, members of the privy council?—They are.

Your lordship's house we have heard is situated in Grosvenor-square?—On the South side of Grosvenor-square, next door to the Archbishop of York's.

On Tuesday the 22nd of February was your lordship riding in the Park?—I was.

Were you accosted by a person of the name of Hiden?—I was accosted by a person whose

name I did not know, but now know it to be Hiden.

Did he deliver that letter to your lordship, addressed to my lord Castlereagh [*handing it to his lordship*]?—He did.

Did he speak to you of it as of business of immediate importance?—He spoke to me of it as of business materially importing lord Castlereagh as well as myself, and some others, and wished it to be delivered immediately to my lord Castlereagh.

I believe your lordship was going at that moment to the council, and delivered it to lord Castlereagh shortly after?—I was going home to dress for a council at Carlton Palace, and not finding lord Castlereagh there, I despatched it with a note from myself to lord Castlereagh.

Did Hiden, at your lordship's desire, give you his card?—He did.

Did you meet him the next morning in Hyde-park, by some appointment you made?—I did.

In the plantation in the park?—I met him in the plantation in the place which is called the ring.

I am not at liberty to ask your lordship the particulars of the communication he made to you, but did he communicate to you, that there was any plan of attacking the cabinet ministers at your house?—That communication is contained in the letter: he made a communication in more general terms.

In consequence of the information you received, did your lordship and the other members of the cabinet alter the plan of the dinner?—The plan of the dinner was given up for that day.

Your lordship dined at Fife-house, at lord Liverpool's?—I did.

Did the preparations at your lordship's house proceed as if the company had been to dine there?—They proceeded as if the company had been to dine there, till they were stopped by a note I sent from lord Liverpool's, to inform my servant that they would not dine there, which, being despatched between seven and eight from Fife-house, I conceived reached my own house about eight o'clock.

You had concealed from your servant the alteration of the plan?—Yes.

The *Earl of Harrowby* cross-examined by Mr. Curwood.

I must ask your lordship a question: you said before, I believe, that you had some intimation of this before that letter was delivered to you?—Yes, I did.

Did not your lordship know, or had not you regular communications of all that passed at those meetings?—I had no communication of what passed at any of those meetings personally.

You had intimation that something of the kind was in contemplation?—We had an intimation at a period antecedent to this, of a design somewhat of this kind being in contemplation.

Mr. Gurney.—I beg your lordship's pardon, but I omitted to point out to you Hiden; is that the person who made the communication to your lordship?—He is.

John Baker sworn.—Examined by Mr. Gurney.

Are you lord Harrowby's butler?—Yes.

Did you, by his lordship's direction, issue cards of invitation for a cabinet dinner, on Wednesday the 23rd of February?—I did.

Brant.—My lord, here are three or four of the witnesses in court, giving each other their evidence.

Mr. Gurney.—They may go out of court, they will not be wanted again. On what day did you issue the cards?—Either the 18th or 19th; I believe Saturday the 19th.

We have understood that the preparations went on till a late hour in the evening?—They did till about eight.

When did you receive notice from his lordship that the dinner would not take place?—It might be about eight o'clock, or ten minutes after.

To that period neither you nor any of the servants knew it would not take place?—No, they did not.

John Monument sworn.—Examined by Mr. Solicitor General.

I believe you come here in custody?—I do.

You are a prisoner in the Tower?—Yes.

Do you remember at any time meeting Thistlewood at the house of a person of the name of Ford?—Yes.

As nearly as you can recollect how long is that ago?—I suppose it was between two and three months before the meeting in Cato-street.

After you had so met him, did he call upon you?—Yes.

How soon afterwards?—I suppose about a fortnight or three weeks.

Did he call alone, or was there any person in company with him?—The prisoner Brant was in company with him.

Was any person in the room besides yourself, when he called?—Yes, my mother and my brother.

How long did he stay with you?—I suppose he was in the room about five minutes, when he called me to the outside of the door, saying he wished to speak with me.

When you went outside the door with him did Brant go with him or not?—No, he did not.

You and he went outside the door?—Yes.

What did he then say to you?—He said that great events were at hand; that people were every where anxious for a change; that he had been promised support by many people who had deceived him, but now he had got men that would stand by him.

What did he say further in that conversation?—He asked me whether I had any arms.

What did you say?—I told him, no.

What did he answer to that?—He said that no man should be without arms; he said every man that belonged to him had got some; some had got a sabre, some had got a pistol, and some a pike: he said that I might buy a pistol for about four or five shillings. I said I had no money to buy pistols; he then said he would see what he could do.

Do you recollect whether any further conversation took place at that time?—No, I do not think there did.

After that conversation passed did you return again into the room?—Yes.

Did Brant and Thistlewood go away together?—Yes, they did.

After this interview did Brant call upon you by himself?—Yes, he did.

How soon afterwards did he call?—About two or three days, I believe.

Did any thing particular pass at that interview?—No, I do not recollect that there did: he said he was in a hurry, that there were several people down stairs waiting for him, and he was going to call on several men, people in our trade.

Do you remember Brant calling upon you on Tuesday the 22nd of February?—Yes.

Did he call alone, or in company with any person?—In company with Tidd.

As nearly as you can recollect, at what time of the day?—I think it was between two and three o'clock.

When he called, at that time will you tell us what passed?—Yes; I said I thought I had lost you: he said the king's death had made an alteration in their plans. I asked him what plans: he said there would be a meeting on the following evening, at Tyburn-turnpike, where I should know all the particulars.

What did he say further?—He turned round to Tidd, and asked whether he should give me the word: and Tidd said, yes; he supposed there was no danger.

Upon that, what did he say?—He told me if I saw any people about, I was to go to them and say b, u, t, and if they were friends they would answer t, o, n.

Making the word button?—Yes; he then said he would be at our house the following morning and tell me further particulars.

Did any thing more pass at that meeting?—No: he and Tidd then went away.

On the following day did Brant call upon you, on the Wednesday?—Yes.

About what hour?—Between four and five.

Did he call alone or in company?—Alone.

What did he say?—He called me down stairs.

Was any body in the room above stairs?—Yes, my mother: he told me he wanted me to go in half an hour with him.

What said you to that?—I told him I could not, that I had got some work to do that must be finished, and that I could not go at that time.

What did he then say?—He asked me what time the work would be done; I told him not before six o'clock.

Upon your telling him not before six, what did he say to you?—He said I must go to Tidd's house, and he told me where Tidd lived.

Where was that?—In the Hole-in-the-wall passage, Brook's-market.

After he had told you this, did he go away?—Yes.

Did you, in pursuance of the directions he had given you, go to Tidd's house?—Yes, about half-past six.

Did you find him at home?—Yes.

What did he say to you?—He said that he was waiting for some more men, and they had not come; and he said that he would not wait later than seven o'clock.

Did any persons arrive before seven?—No.

When seven o'clock came, what did Tidd do?—He went to a box in a corner of the room, and took out a pistol.

What did he do with it?—He put it into a belt which he had got round his body, under a great coat.

What else did he do?—He took a bundle of pikes, I suppose about six or eight, wrapped in a piece of brown paper.

Pikes, or the heads of pikes?—The heads of pikes, about six or eight.

What did he do with them?—He took them in his hand.

Did he take any thing further?—Yes, a staff about four feet long.

Did you take notice of that?—Yes, it had a hole to receive something at the end.

Where did he then go?—He went down stairs, and through Brook-street, into Holborn.

Did you accompany him?—Yes, I did.

And up Holborn, I suppose?—Yes.

While you were going along Holborn, did he state any thing to you, or had you any conversation with him as to the business he was going on?—No, in Holborn he gave me the stick to carry.

Where had you conversation with him as to the object?—I think as we were going along Oxford-street.

Will you state what that conversation was?—I asked him what we were going about, and he said I should know when we got there. I asked him whether we were going to the House of Commons.

What did he say?—He said no, there were too many soldiers about there. I then asked him again, and he told me they were going to Grosvenor-square.

Did he say where in Grosvenor-square?—No, he did not. I asked him whether any one in particular lived there, and he said there was a cabinet dinner there that evening.

Did any thing further pass?—No, I do not recollect any thing further.

Where did he conduct you to?—To Cato-street.

To what place in Cato-street?—Through a gateway, and on the right-hand side there was a stable.

When you got to Cato-street to the gateway,

what happened?—There were two people standing under the gateway.

Do you know who they were?—No, it was quite dark, and I did not stand close to them myself; I stood a few steps behind him.

Had he any conversation with these people?—Yes, he spoke a few words to them.

After that, did you go into the stable?—Yes.

What did you observe on your first entrance into the stable?—There were three or four men there, and there was a light, and he asked whether Mr. Thistlewood was up stairs.

What was the answer?—Yes, they told him he was.

Did you go up stairs?—Yes.

Was there any body in the room up stairs?—Yes, I suppose about one, or two, or three-and-twenty people, according to what I could tell.

Was Thistlewood of the number?—Yes.

Was there any table, or any thing like a table there?—A bench.

What kind of a bench?—It seemed to me like a carpenter's bench.

Was there any thing upon it?—Yes, a great many swords and pistols.

Did Tidd go up stairs?—Yes.

When you got up stairs, after you were there, was any thing said as to what they were going to do?—Yes, there was a man in a brown great coat sitting on a low bench on the opposite side from where I entered, and he spoke about the impropriety of going with so small a party as five-and-twenty men to lord Harrowby's, and Thistlewood said that that number was quite sufficient, for, supposing lord Harrowby had sixteen men servants, he only wanted fourteen men to go into the room, and therefore that number was quite sufficient. He then said what should they do when the business was done, when they came out of the room, because most likely a crowd would be about the door, and how should they escape.

That was the man that was addressing Thistlewood?—Yes; Thistlewood said "You know this is the smallest body;—the largest body is already away;" the prisoner Davidson then told him not to throw cold water upon their proceedings.

To whom did he say this?—To the man in the brown coat, for if he was afraid of his life he might go, as they could do without him.

By Davidson do you mean the man of colour?—Yes; Brunt then said, that sooner than they should leave the business they were going about, he would go into the room by himself, and blow them all up, if he perished with them; he said, "you know we have got that that can do it," or words to that effect; the man in the brown great coat said, though he did not like going with so small a number, yet as they were all for it, he would not be against it; he then proposed that they should put themselves under the orders of Mr. Thistlewood; Thistlewood said, that every one engaged in that business would have the same

honour as himself; he then proposed that the fourteen men to go into the room should volunteer from among the persons that were in the room.

After Thistlewood had so proposed, what was done?—A few minutes afterwards, I suppose about eleven or twelve or thirteen out of the fourteen, ranged themselves on the other side of the room, and one of them, Tidd, came out to speak to me to say that I might choose my situation, and Thistlewood put him back, saying, "you all know your places." I could not understand all that Tidd said to me, I do not recollect any thing particular passing after that, till the officers came into the room.

How soon afterwards did the officers come into the room?—I should suppose about five minutes.

What happened when they came into the room?—There seemed to be two or three got up stairs before those in the room knew it, and one of those said they were officers, and told them to surrender, and said there was a guard of soldiers below.

Were you afterwards taken into custody in the room?—Yes.

And you have been in confinement ever since?—Yes.

John Monument cross-examined by Mr. Curwood.

Mr. Thistlewood said, that every man would have equal honour with himself?—Yes.

What was to be your honourable post?—Indeed I do not know.

What led you there? was it the love of honour?—No, it was fear principally that led me there.

What fear could take you there?—The day before, when Mr. Brunt was at my house accompanied by Tidd, he said that any one that had engaged in that, and who did not come forward at the time would be destroyed.

Had you then engaged?—I had not engaged; he had not asked me no further than to go to the place.

Do you go to a place at the request of any man to do you do not know what?—It was foolish, but I certainly did.

You were foolish?—Yes, I cannot charge myself with any crime.

You asked, as they were going along Oxford-street, whether they were going to the House of Commons?—Yes.

Why did you ask that? did you suppose they were going there?—I was afraid it was something bad when I saw him take the arms.

What made you suspect they were going to the House of Commons?—I do not know any thing particular that made me suspect that.

To hear the debates perhaps?—No.

He told you it was a cabinet dinner?—Yes.

I think you used these words on Tuesday, "And then I fully understood what they were going about?"—Yes.

Then what did you fully understand they were going about?—I do not know that I said

that exactly; but that I asked no further question, because I was certain what it was.

What did you then suppose they were going for?—I could not see that they could be going for any thing but to destroy the persons there assembled.

And you would very readily join in any thing of this sort?—No, I would not.

Had you belonged to none of those meetings before?—To the private meeting do you mean?

Yes, to the private meetings?—No, I did not.

How should those wicked men come to ask you, so honest a man, to join in this?—I do not know; I had first seen Mr. Thistlewood at Mr. Ford's house.

That was just after the Manchester business?—No, about a week before the meeting in Finsbury-market.

When was the Finsbury meeting?—I cannot say.

It was after the Manchester meeting?—Yes.

Then it was that Mr. Thistlewood told you that he thought all his friends should have arms?—Yes.

When Brunt called upon you, you told him you were not ready to go because you had got some work to do?—Yes.

What took you to Tidd's if you did not like this business?—Because I was afraid.

Why did not you go to a magistrate and tell him your fears?—That was a thing I should not like to have done.

He told you there was a by-word, a password?—Yes.

And you very readily agreed to go with him?—Not very readily.

You expressed a great deal of reluctance?—I cannot say I did, I was afraid to do that.

When you found yourself in a trap and taken, then your conscience came to you, did it?—It was to me before, for I never intended to do any thing, though I was obliged to go; when I found what they were upon, my intention was, when I got out, to have got away from them.

I think you told us of a conversation in which Thistlewood or somebody told a man in a brown coat, if he was afraid to join them he might go away, for they wanted no cowards there?—Yes.

Why did not you take advantage of that?—I wished, at the time, he had said so to me.

You thought it was only the man in the brown coat that might go?—Yes.

You joined them from fear?—Yes.

You proceeded from fear?—I did not know what their proceedings were at first.

You did it at a hazard?—I certainly acted very foolishly.

That is very tender, do not you think you acted very infamously?—No, I cannot say that.

Thomas Monument sworn.—Examined by
Mr. *Solicitor-General*.

I believe the last witness is your brother?
—Yes.

Did you know of your brother having seen
Thistlewood at Ford's?—Yes, I had heard
him mention it.

Did Thistlewood afterwards call upon him
at his lodgings?—Yes, he did.

Do you live with your brother?—Yes.

Did Thistlewood call alone, or in company
with any person?—He called in company with
Brunt.

Did Thistlewood and your brother remain
in the room all the time? or what occurred?—
They remained in the room some time, I sup-
pose about ten minutes, and then Thistlewood
asked my brother if he could speak to him.

Upon Thistlewood asking this of your bro-
ther, what happened?—They went outside the
door.

Did they afterwards return into the room?
—Yes.

Do you remember Brunt calling upon your
brother, on Tuesday the 22nd of February?—
Yes.

Do you recollect the conversation that pass-
ed at that time?—Yes, I do; Brunt brought
a man of the name of Tidd with him; when
they came into the room, my brother said to
Brunt, "I thought I had lost you;" there was
something said concerning the king's death.

By whom?—My brother, I think, said the
king is dead since I saw you.

Do you recollect distinctly what was said
about the king's death?—No, I cannot recol-
lect exactly; Brunt said the king's death had
made some alteration in their plans; my bro-
ther said "what plan?" he said their plans
were different, they had different objects in
view; then Brunt said to Tidd, "suppose we
give them the outline of the plan:" but I do
not know whether Tidd made any answer, and
Brunt told us we were to meet up at Tyburn-
turnpike, on the following evening at six
o'clock; then they give us the pass word.

What was that?—It consisted of the letters
b, u, t.

Who were to say the letters b, u, t?—We
were, and if any of their party were there, they
would answer t, o, u; and by that, we should
know them.

Was that all that passed at that time, that
you recollect?—Yes, they went away then.

Do you remember Brunt coming the next
day?—Yes, it was near five o'clock in the
evening.

What did he say?—He asked my brother if
he was ready to go; he said, he could not go
just then, for we were about finishing some
work; he told him if he called upon Tidd in
Hole-in-the-wall-passage, he would take him.

What time did your brother go, as nearly as
you can recollect?—It was within a very few
minutes of seven o'clock, when he left off.

You did not see him again that night?—I

never saw him afterwards, till I saw him in
custody.

George Caylock sworn.—Examined by
Mr. *Littledale*.

Where do you live?—At No. 2, Cato-street.
Do you remember on the 23rd of February
last, seeing any person that attracted your at-
tention in Cato-street?—Yes.

Who was it?—Mr. Harrison.

You had known him before?—Yes, I had.
Do you see him in court?—Yes, he is the
gentleman that is standing there [pointing to
the bar].

Where did you see him?—He was going
into the stable, I asked him how he did, and
he the same to me.

Did you ask him what he was going there
for?—Yes, he said he had taken two chambers,
and was going to clean them up.

Had you any further conversation with him?
—No, none.

In the course of the same evening, did you
see any persons going into and coming out of
the stable?—Yes.

At what time?—From five to seven, I saw
different persons going in and out.

Lord Chief Justice Dallas.—There is no
doubt that persons were going in and out; they
were found there.

Mr. Solicitor General.—It is immaterial, cer-
tainly, my lord. I will call Ruthven.

George Thomas Joseph Ruthven sworn.—Exa-
mined by Mr. *Bolland*.

You are a constable at Bow-street?—I am.

In consequence of information, did you go
to Cato-street on the 23rd of February with a
party of the officers?—I did.

At what time did you get there?—About
six.

Where did you muster?—The first informa-
tion I had of going to the stable was about
half-past eight; then we mustered at the
corner.

What time did you enter the stable?—
About half-past eight, as near as could be.

Whom did you observe on going in?—I
observed a man walking backwards and for-
wards with a gun on his shoulder, and a sword
by his side, as a sentinel.

What sort of a man was that?—I cannot
say, for I did not stop one instant. I said to
the party with me, "secure that man," and
went up stairs.

There was a ladder?—Yes.

Who proceeded with you up stairs?—My-
self, then next Ellis, and then Smithers and
Gibbs, as I have been since told, but I did
not see him.

When you got into the loft, what did you
observe?—I observed several men standing
round a bench.

What do you mean by a bench?—There
was a carpenter's bench in the room.

How many men might there be in the room?

as neatly as you can state?—About four or five and twenty.

Did you perceive any thing on the bench?—There was; I heard a clattering of arms, and saw some persons apparently sorting the arms on the bench.

Did you or Ellis say any thing?—I said, "We are officers; seize their arms."

Before you got up the stairs, before you gained the loft, had any thing been said by any person below?—I am not aware of it; I cannot call it to my recollection.

Upon your saying this, what did any one do?—Thistlewood looked up, caught up a sword, and retired into a little room; I think there were three or four retired into the little room and the others into the back part.

Was there a little room going out of the larger room?—There was, on the right of the bench as we went up.

Lord Chief Baron.—Which of the two side rooms?—The further one, my lord, next the street.

Mr. Bolland.—Did you know the person of Thistlewood?—I did, well.

How long had you been acquainted with him?—From the time of the state trials before, two or three years ago.

Where was Smithers?—Smithers then appeared on my right hand.

Did you hear Ellis say any thing to the party?—I did not.

What did Smithers do?—In approaching the door where Thistlewood had retired,

Did he then approach the door?—Yes.

Did he pass you?—He did.

Upon his approaching that door, was any thing done by any of the parties within that room?—Thistlewood stabbed him with a sword; he was fencing, to prevent any person approaching that door.

You saw him fencing before Smithers approached him?—Yes, and on his approaching him, he put his arm forward in this way.

Was any thing else done from that room?—Not that I saw.

Did you hear any thing?—A pistol was fired almost instantly on Smithers being stabbed, and the lights were put out.

What happened when darkness came on?—I then heard from that corner of the room where the little room was, some voice crying "Kill the b——rs, throw them down stairs."

Did the parties keep their original stations in the room, or withdraw themselves to the end of it?—On their saying that, I heard a rush towards the staircase.

Did you join in that rush?—I did.

Did you say any thing?—I did, upon their saying "Kill the b——rs, throw them down stairs," I said, "Aye damn them kill them," or "Aye kill them," or something of that kind.

Did you get down the ladder?—I did.

When you got down was there any light in the stable below?—There was not when I got down.

Where did you then go?—I got into John-street and met the soldiers.

Did you return to the stable?—I did.

Upon getting to the stable did you see either of the prisoners?—I did; Tidd.

Where did you see Tidd?—I saw him coming from the door.

Do you mean only coming from the door, or coming out of the door?—Coming out of the door; the door was open, and he was coming from it.

Was he walking or running?—Between the two, a sort of shuffle.

Had he any thing in his hand?—I did not observe that at that time.

What did you do?—I called to somebody following me to lay hold of him, and immediately upon my saying that he lifted his arm, and I saw a pistol.

Upon your seeing that did you seize him?—I did; I fell, and pulled him upon me on the dung heap.

Did the soldiers come up and extricate you?—They did.

Who extricated you?—Serjeant Legg and some of the men.

Did you take Tidd any where?—I did to a public-house called the Horse and Groom, the corner of Cato-street.

Was he searched?—I searched him.

What did you find upon him?—Two ball cartridges.

Where were they?—In his breeches pocket.

Was he accoutred at all?—He had a belt round his waist.

Was any other prisoner brought in, while you were there?—There was Bradburn.

Did you search him?—I did.

What did you find upon him?—In his breeches pocket I found six ball cartridges, and three loose balls.

Was he accoutred at all?—Round his waist there was a string five or six times round.

Would that string have answered the purpose of a belt for a pistol?—It would.

Was any other prisoner brought in?—Davidson.

What arms did he exhibit?—When he came in he began to sing a song, "Scots wha ha' wi' Wallace bled," and damned any man that would not die in liberty's cause, that he gloried in it.

Was he at all accoutred?—I did not observe it.

Did you search him?—I believe he was searched by another.

Was Wilson brought in while you were there?—He was.

I do not know whether you searched him or not?—I did not.

After this had passed at the public-house, did you return to the loft?—I did.

In what state was the loft, on your return?—There were several soldiers and four of the prisoners at the bar in the room, and some of the officers.

Lord Chief Justice Dallas.—What happened

when Smithers received this threat with the sword?—He fell back and said, "Oh, my God," or "Oh, I am done," I do not know which.

Mr. Bolland.—He very soon died?—Directly, I heard no more.

When you returned to the loft, did you find any arms?—Yes, I did.

What arms did you find?—Two swords,

We have now a list of all the arms which were found, and by whom; have you made an inventory of those arms?—I have.

Look at that, and say, whether it is an accurate account; did you make that yourself [*handing a paper to the witness*].—I did, I found two swords and one bullet, ten hand-grenades, and two fire balls.

These, you personally found?—Yes.

Is that a list of all the things in your custody, stating the respective places where they were found?—Yes.

Go on with your list.

Mr. Adolphus.—State the places where they were found.—Likewise one large one that I found, and which has been in my custody ever since.

Mr. Bolland.—What is that?—A thing filled with powder; it is something similar to the others, only much larger.

Has it a fuse to it?—Yes.

Read that list.—Thirty-eight ball cartridges, found by serjeant Lott; a firelock and a bayonet, by corporal Strickland; one powder flash, by James Edgar; three pistols and one sword, with six bayonet spikes and a cloth belt; one blunderbuss; one pistol; fourteen bayonet spikes and three pointed files; one bayonet; one bayonet spike and one sword scabbard; one carbine and bayonet; two swords; one bullet; ten hand-grenades; two fire balls; one large grenade and bayonet; the one I spoke of, and that was found in my presence, and that has been in my custody ever since; a rope ladder; one sword stick; forty ball cartridges; one bayonet and three loose balls; these were all found in the loft; in the pocket of Bradburn, six ball cartridges; three balls and some string put round him to act as a belt; one pistol that Tidd fired; a pistol that Wilson attempted to fire.

Lord Chief Justice Dallas.—You had not mentioned that Tidd fired.—The pistol that Tidd lifted his arm to fire he did fire, after he was partly lying on me on the ground. There were found in the stable, a blunderbuss; a sword, belt, and scabbard; one pistol; one ditto and one sword; twelve sticks with ferules: in the pocket of Tidd, two ball cartridges, and round him a leathern belt.

Mr. Bolland.—What sort of sticks were those?—They are long sticks, I should think six or seven feet long, perhaps eight, I am not quite sure; in the end there is a hole; two ball cartridges found facing the stable, and ten

ball cartridges found thrown away in Newnham-street: one musket cut down, and one sword taken from Davidson: one haversack; cross belts; one pricker; bayonet scabbard; cartouche box, and a belt round his body, those were on Davidson: two haversacks; one belt and tin powder case taken from Ings: four pistol balls; one pistol key, and a knife case from Ings: a case to receive a large knife; one haversack, containing seventeen ball cartridges; three balls; one pistol flint; one pricker; one worm for drawing cartridges; one knife and a turn screw. I also got a stick which was left in the public-house.

Before you left the public-house where Davidson and Bradburn expressed themselves as you have stated, did Wilson express any thing?—Yes; he said he did not care a damn, he knew it was all over, they might as well kill him now as another time.

Before you went to the stable did you go to the Horse and Groom?—I did.

While you were there did either of the prisoners come there?—Cooper and Gilchrist came in.

Had Cooper or Gilchrist any thing with them?—Cooper had a stick.

What sort of a stick was it?—A mopstick or broomstick.

Did he leave it in the house or take it out with him?—He left it in the house.

Did you take possession of it?—Not directly. I did afterwards, that night, and have it now.

Did either of the prisoners come back for that stick?—Gilchrist did.

You say it is a mopstick?—It is.

Is there any thing particular about it?—At the end it is cut round that depth [*two inches*], as if to receive the socket of any thing.

George Thomas Joseph Ruthven cross-examined by Mr. Adolphus.

You say the lights were put out; how many lights were there?—As nearly as I can tell, in the two rooms, about eight. I think about four or five in the first room, the loft, and two or three in the end room where they retired to; but this I guessed from the glare of light that appeared.

The four or five in the loft, or first room, you could see?—I could.

You have no doubt there were four or five lights?—I have no doubt.

The words you said were very properly coming up "We are officers; seize their arms?"—Yes.

Nothing else? did Ellis say any thing else?—Not that I heard.

Did Smithers say any thing more than "Let me come forward," and when he received the blow, "Oh my God?" or, "Oh I am done?"—No.

Those were all the words that passed?—Yes, all that I heard.

James Ellis sworn.—Examined by
Mr. Gurney.

You, I believe, are one of the conductors of the patrol at Bow-street?—I am.

On the evening of Wednesday, the 23rd of February, did you go with other officers to a stable in Cato-street?—I did.

Did you enter the stable close to Ruthven?—As close as I possibly could enter.

Did you find a light in the stable?—There was a light.

Did you find any men in the stable?—There were two.

Where was the man standing whom you observed first?—The first man I observed was standing about half-way between the door at which we entered, and the foot of the ladder which goes up into the loft.

Is that ladder placed at the further end of the stable?—At the further end, in the very corner, opposite the door at which we went in.

Who was that man?—I believe him to be Davidson.

The man of colour?—Yes; I took him by the collar, and turned him half round, and looked in his face, and I believe him to be Davidson.

How was he accoutred?—He had got a short gun, or carbine, in his hand, carrying it in somewhat of this manner [*describing it*], and at his left-hand side a long sword hanging, and two white belts across his shoulders.

You say you took him by the collar, and turned him half round?—Yes, and I looked in his face, and saw he was a man of colour; I immediately desired some of the others who were with me to secure that man.

Did you observe any other man?—Yes, there was another man in the further stall of the stable, near the ladder; he appeared to be a shorter man.

How was he dressed?—I believe he had got a dark coloured coat on, but I took but very little notice of him.

Did you follow Ruthven up the ladder?—I did.

Did you hear Davidson say any thing to the persons above?—I heard somebody from below call out something—"men," the last word was "men," but I could not understand the rest.

Did you understand it to be a signal to those above?—I did.

You say you followed Ruthven up the ladder, who followed you?—Richard Smithers.

As you ascended the ladder, did you hear any noise in the loft?—I did.

What did you hear?—I heard a noise, which appeared to me to be a rattling of swords.

When you got up the ladder who then spoke?—Ruthven.

What did he say to the best of your recollection?—He called out, "We are officers; seize their arms," or, "we are officers, surrender your arms," or to that effect.

Were there lights in the loft?—Yes, there were.

What were they?—There were candles.

How many do you remember seeing?—I am positive there were three or more, but I cannot speak to how many there were; there were three lights or more in the loft; there were lights in the little room, from the shade which I saw, but I could not see what lights they were.

Where were those candles placed?—Apparently on the carpenter's bench which stood across the room.

Upon Ruthven, and yourself, and Smithers getting into the loft, what did you observe take place?—The moment I gained the top of the ladder, I observed a number of men falling back to the back part of the loft, with their backs to the wall, placing themselves against the wall.

Did you see Thistlewood?—I did.

What did he do?—There were Thistlewood, and two or three others between the end of the carpenter's bench, and the door of the little room; and immediately on my gaining the top of the ladder, Thistlewood presented his sword at me, and shook his hand in this manner, as if to make a stab. I immediately desired him to desist, or I would fire at him.

Had you a pistol in your hand?—I had a pistol in my right hand, and my truncheon or staff in my left hand, which I held out in this manner [*describing it*].

Upon that what did Thistlewood do?—Upon that he retreated, backing into the little room, through the little door; at that moment Smithers having gained the top of the ladder, rushed forward to enter the door of the little room.

What did Thistlewood do upon his approaching the door?—At the moment that he reached the jamb of the door, Thistlewood made a thrust and stabbed him in the right breast.

Upon that what did Smithers say or do?—He held up his hands in this way over his head, and exclaimed, "Oh my God!" or words of that kind.

Did he fall immediately afterwards?—He fell almost immediately, he staggered past me and fell.

Upon this what did you do?—At the moment that he threw up his hands and exclaimed "Oh my God!" I fired.

At whom?—At Thistlewood.

You fired your pistol?—I did.

As soon as you had done that, what became of the lights?—The lights were all put out the moment that I fired, the flash of my own pistol was the last light I saw.

I presume great confusion took place immediately?—There was a great confusion.

Were you forced down the ladder into the stable?—By the rush made against me I was thrown down the ladder.

Were there any other shots fired?—There were several fired in the loft while I was upon the ladder.

Did you get to the door of the stable?—Upon recovering myself in the stable I got to the door.

Were any shots fired then?—There were two or three shots fired then; two, I think, passed me in the door.

From whence do you think they were fired?—I could not distinctly tell.

Did you perceive any fired from the window of the little room?—There was another shot fired in the stable by a man who stood near the bottom of the ladder; he fired up the manger.

When you got to the door did you observe any firing from the window of the room above?—There were some shots fired from the window of the little room above.

That room looks into Cato-street?—It does.

While you were at that door did you observe any man in Cato-street?—I heard the cry of "Stop him," and I observed a man running away.

Was he running down Cato-street?—Yes, running towards Queen-street.

What did you observe upon him?—I observed he had got white belts.

Do you mean cross belts?—Yes.

Did you pursue him?—I pursued him.

Did you catch him?—I caught him in Cato-street.

Whom did he turn out to be?—Davidson, the man of colour.

Upon your laying hold of him what did he do to you?—He made something of a cut with his sword.

Do you mean a cut at you?—I believe it was intended at me.

Did any other persons come up and assist you in securing him?—Yes, they did.

Who were they?—One of our people of the name of Gill, and another of the name of Chapman.

Did you leave him in the custody of your brother officers, and return to the stable?—I did, as soon as I had secured him I returned as quick as possible.

Did you then find lieutenant Fitzclarence and the soldiers there?—I found the soldiers there, I do not know whether lieutenant Fitzclarence was in the place.

Did you find any of the prisoners who had been taken in the loft or the stable?—There were four men; they were not in actual custody, but they could do no harm; they were in the loft among the soldiers.

Who were they?—I cannot speak very positively; Monument was one, and I believe Wilson was another, I think Strange was another, but I am not positive.

I believe you fetched Davidson to the loft?—As soon as they were secured I fetched him into the loft to them.

Then they were taken away to Bow-street?—Yes.

William Westcott sworn.—Examined by Mr. Gurney.

—You are also a conductor of the patrol at Bow-street?—I am.

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Lord Chief Justice Dallas.—Are you going to fresh facts?

Mr. Gurney.—Yes, my lord, I am; did you accompany Ruthven and Ellis and the other officers of the stable in Cato-street?—I did.

You, I believe, did not go up into the loft at first?—No, I did not.

When they had gone up did you hear any noise of firing, or any confusion above?—I did.

Did you observe any person in the stable?—I did.

Whom did you observe?—Ings.

The prisoner Ings?—Yes.

At the first moment that you observed him what was he doing or attempting to do?—I did not see him attempt to do any thing; he rushed towards me as if attempting to get out of the stable.

What did you do?—I seized him by the collar,

And did what?—And shoved him back against the wall, at the foot of the ladder.

What did he then do?—He went to put his hand of his right side; upon that I hit him a blow.

As you thought to get a weapon?—Yes.

Upon that you hit him a blow?—Yes, upon the right side of the head, and knocked him down, then they came tumbling down the ladder.

Then the officers came tumbling down the ladder?—Yes, they did.

Did you hear the firing above?—O yes.

After you had heard that firing above, and they had tumbled down, did you see the flash of any pistol any where?—I did, from the bottom of the ladder.

Where did it appear to you that pistol was fired into?—As it appeared to me, it was fired into the stable.

Did you then observe any person come down whom you knew?—I did.

Where was that?—When the man came from the ladder into the stable, I saw it was Thistlewood.

Did that appear to you to be the man who had fired that pistol?—He did.

What did Thistlewood do?—When he came into the stable he turned round and presented a pistol to my head, but I released Ings, and I put my hand up to save myself, and the ball came here [*pointing to his arm*].

Did the pistol go off?—Yes it did; I put my hand up to save my head, and found myself wounded.

Did the pistol go off?—Yes, it did.

You left Ings to protect yourself?—Yes.

You found a pistol presented at you and it went off?—Yes.

And went where?—I found it had wounded my hand, and there were three holes in my hat, and one on the right side did not come through. I received then a violent blow on the right side of my head, and I fell.

Did it hurt your hand?—Yes.

Did it perforate the sleeve?—Yes, it went right through.

And through the hat?—Yes.

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As you fell did you observe Thistlewood do any thing?—He immediately cut at me with a sword.

And what did he do then?—He rushed out at the stable door.

I omitted to ask you whether when Ruthven, Ellis, and Smithers went up the ladder, you heard either of them say any thing to the persons in the loft?—I heard somebody say something, but who it was I cannot say: I heard somebody say something, but I cannot say what.

A Juryman.—What became of Ings when he knocked you down?—He made his escape out of the stable.

When you raised your arm to ward off the blow that was aimed from a musket or pistol, by Thistlewood, you let Ings go?—Yes.

And he made his escape?—Yes.

Lake Nixon sworn.—Examined by Mr. Gurney.

Are you a Bow-street patrol?—Yes.

Did you go with the other officers to this stable in Cato-street?—Yes, I did.

Did you see Westcoatt in conflict with any person there in the stable?—Yes.

With whom?—With that man there.

Which, Ings?—Yes.

Did you see Ings leave the stable?—I did, I made a snatch at him to catch him, but missed him.

Was that after Thistlewood had got away?—No, I do not think he had got away then.

You made a snatch at him to catch him?—Yes, and he got out; I ran after him up John-street, but he was got so far.

Did you meet him in custody?—As I was going up John-street, I heard a pistol fired, or something of that kind.

You heard a pistol fired?—Yes.

Did you find him in custody of any persons?—I found him in the custody of Brooks and Champion.

Joseph Champion sworn.—Examined by Mr. Solicitor General.

You are one of the Bow-street patrol?—Yes.

Did you go to this place, Cato-street, on the evening of the 23rd of February?—Yes.

Do you remember Ruthven going into the stable?—I do.

Did you follow him to the foot of the ladder?—I was about the sixth or seventh man behind him; I was at the foot of the ladder when he was at the top.

Whom did you see at the bottom?—Ings.

Did he cry out any thing?—He held up his head towards the top of the ladder, and said, "Look out, look out above."

Was any attempt made at that time to secure him, that you know of?—Yes; Westcoatt was at that time in front of him, endeavouring to secure him.

Do you know whether he made his escape?—He did; I turned to the top of the ladder,

and as I was going up I saw the lower part of a man's body in the rack. I proceeded immediately to strike him on the legs, and endeavoured to force him back, and when I turned round, Ings was gone.

You heard Ings cry out, and went up the ladder part of the way, you heard a contest with Westcoatt, and Ings made his escape?—Yes.

Was he afterwards taken into custody?—He was.

Where?—In the Edgware-road.

Did you go to the spot?—Yes, I laid hold of him immediately after the watchman.

You found him in custody, and Brooks was one of the persons who had him in custody?—Yes.

Did you search him?—We took him to Mary-le-bone watch-house, and searched him.

What did you find upon him?—Four pistol balls, the key of a pistol, and a knife-case made of blue cloth.

What kind of knife, small or large?—Pretty large.

Have you seen the knife produced here the other day?—Yes, I have, it fits it exactly.

There was no knife about him?—No, not at the time we searched him.

The knife-case fitted the butcher's knife that was produced the other day?—Yes.

Had the knife any wax-end about the handle?—It had.

In addition to that did you find any thing else about him, any bags?—Brooks did; I saw them taken from his person; he took his great coat off, and there were two haversacks, one under each arm, and in one there was a tin case nearly full of loose powder; he had also a cloth belt round his body, with pistol holsters.

In addition to the haversacks there was a cloth belt round his waist?—Yes, which Brooks took from him.

Was that adapted to receive pistols?—It was.

Was that all that was found upon him that you know of?—There was a paper relating to some club, which I believe Brooks returned to him.

Mr. Solicitor General.—Do you ask this witness any questions?

Mr. Adolphus.—No.

John Wright sworn.—Examined by Mr. Solicitor General.

You also are one of the Bow-street patrol?—Yes.

Were you at this stable on the 23rd of February?—Yes.

Did you go to the foot of the ladder?—Yes, I did.

Whom did you see at the foot of the ladder?—I saw a man in the further stall in the stable.

Do you know whether or not it was the prisoner at the bar, Ings?—I do not.

Was it a man of about the same size?—About the same size.

Did you take any thing from him?—I took a knife and a sword.

What kind of knife was it you took from him?—A butcher's knife.

Was there any thing twisted round the handle?—Wax-end tied round it.

What kind of sword?—A sword about three feet long, with a brass handle, and a piece of string tied round it.

After this what happened to you?—I received a blow, and was knocked down, and received a stab in my side.

Lord Chief Justice Dallas.—You did not know the man.

Mr. Solicitor General.—No, but he says he was a man in point of size like the prisoner.

Mr. Justice Richardson.—And standing in a stall at the foot of the ladder?

Witness.—In the further stall.

Mr. Solicitor General.—You say you were knocked down, and had a stab in your side; after you recovered did you find that man gone?—Yes.

Mr. Solicitor General.—I shall not ask the witness as to the rest, I only ask as to that which affects the prisoner at the bar; did you search Wilson?—Yes, I searched Wilson.

What did Wilson say?—He said nothing particular.

William Charles Brooks sworn.—Examined by *Mr. Solicitor General.*

Were you one of the Bow-street patrol?—Yes.

Were you in Cato-street?—No, in John-street.

What did you perceive in John-street?—I saw the prisoner Ings running up the street, and when I crossed the street, there was another of my partners with a cutlass, and I had a pistol, and when I got on the road, he fired at me.

Fired at whom?—He fired at me, he told me he would shoot me.

Did the ball strike you?—Yes, I snatched at the pistol, and the powder scorched my hand, the ball went through the wrist of my great coat, through the collar of that coat, and through the shoulder of my waistcoat, it bruised my shoulder about the space of half-a-crown, and went out at the back I believe.

What was the effect of that?—It staggered me to the right.

Did he run on?—No, he came into the road to avoid my partner, I suppose, and ran into the Edgware-road, and flung the pistol away.

Was there a watchman there?—A little further on there was.

What was his name?—Moay.

Did he take him?—He laid hold of him just as I did.

Did you ever lose sight of him?—No, I was not further from him than I am to that gentleman [a yard or two].

You still pursued him?—Yes.

And between you he was taken?—Yes.

After you had taken him, what conversation passed between you?—I said to him, you rascal, why did you fire at me, a man you had never seen before? he said, to kill you, and I wish I had done it.

Did he say any thing more?—He repeated it, both to my partner and to the soldiers, he told one of the soldiers so afterwards.

William Lee sworn.—Examined by *Mr. Gurney.*

Are you one of the Bow-street patrol?—Yes.

Did you go to the public house, the Horse and Groom, in the evening, before the officers went to the stable?—Yes.

Did you observe any persons in the Horse and Groom, who were afterwards taken?—No, I did not.

Did you see Cooper and Gilchrist there?—I saw them go in there.

Were they taken that night among the persons there?—They were.

And taken to Bow-street?—Yes.

Lieutenant Frederick Fitzclarence, sworn.—Examined by *Mr. Bolland.*

I believe you are a lieutenant in his majesty's Coldstream regiment of guards?—I am.

Were you, on the 23rd of February, applied to by the Magistrates of Bow-street, to go to Cato-street?—I was.

Did you take a picquet with you?—I did.

What time did you arrive there?—A few minutes after eight.

What time was it that you entered the stable?—I should think three or four minutes after eight.

What did you observe?—The first thing I saw, going under the gateway leading into the street, was a police officer, who cried out "soldiers! soldiers! stable door! stable door!" I went on and met two persons coming out of the door-way; one of whom presented a pistol at me, I am not sure that it was a pistol, but he presented something at me, at the same time a sword made a cut at me, which I parried and seeing the body of soldiers coming up, he ran into the stable; I followed him, and the moment I got into the stable, I ran up against a man, who surrendered himself saying, "do not kill me, and I will tell you all;" I gave him over to the picquet, and went forward into the stable, where I went up into one of the stalls, and took another man out, whom I delivered over to the picquet, also; I then led my men up the steps into the loft.

Lord Chief Justice Dallas.—There was only room for one at a time?—No.

You headed your men?—Yes; the first thing I trod over was the leg of poor Smithers, and in ascending the steps, I saw three, or four, or five persons in the room; the light afterwards went out.

Did you see any arms in the loft?—A large quantity.

What description of arms?—One blunderbuss, or more, swords, pistols, pikes.

Were any arms picked up in the stable below?—Yes, there were.

They were delivered over by your directions to the soldiers?—Yes, the soldiers took them away.

Serjeant William Legg sworn.—Examined by *Mr. Littledale*.

I believe you are a serjeant in the second Coldstream guards?—Yes.

Did you go along with the party that was commanded by lieutenant Fitzclarence in Cato-street?—Yes.

In consequence of any intimation that you had, did you direct your party to advance quicker than they had, in double quick time?—Yes, in double quick time.

Did you get to the gateway which is near a public house, on the left-hand side of the street?—Yes.

Just before then had you heard the report of pistols?—Yes.

Did you perceive a man standing with his back against the wall, by the stable in Cato-street?—Yes.

Had he a pistol in his hand?—Yes.

Did he level it?—He levelled it at lieutenant Fitzclarence.

Did it go off or was it turned away?—It was turned away by my pike.

Did the pistol go off?—I then seized the pistol with my left hand, and a scuffle ensued between the prisoner and me.

Who was the prisoner?—Tidd.

Did the pistol go off?—Yes, after some time.

In whose hand?—In both hands: I had hold of the trigger at the time it went off.

I believe it tore your coat?—Yes, it did.

I believe you afterwards delivered Tidd to the police?—Yes.

Have you got the pistol still?—Yes, the pistol is here.

Mr. Gurney.—It will be produced among the other things.

Mr. Littledale.—What other prisoner did you take?—I took no other: after going up, in the loft I saw three others who had surrendered.

Whom did you see in the loft?—Cooper, Monument, and Gilchrist.

Samuel Hercules Taunton sworn.—Examined by *Mr. Solicitor General*.

I believe you belong to the public office at Bow-street?—Yes, I do.

Did you on Thursday morning, the 24th of February, go to Brunt's lodgings?—I did.

Did you see Brunt there?—I did, and apprehended him.

Did you search the apartments which are occupied by him?—I did, but found nothing in the front room.

Did you search the apartments that were occupied by him?—I did.

There you found nothing?—Nothing.

Having searched those apartments, did you go into the back room?—I did.

What did you find in the back room?—Two rush baskets.

Were they both done up?—Both packed up, one tied up in an apron.

What colour, blue?—Blue.

Did you ask Brunt about those baskets?—I did.

What did you ask him?—When I went into the room there was nothing in the room but two baskets and a pike handle.

Did you ask Brunt any thing about those baskets?—I did.

What did you ask him?—He said he knew nothing of them.

Were the baskets present at the time you asked him that question?—I brought the baskets out into the other room.

You asked him what was in the baskets?—Yes.

And he said he knew nothing about them?—He knew nothing about them.

Did you afterwards open the baskets?—Yes, I did.

When you opened the baskets what did you find in them?—Nine papers of rope-yarn, and tar, and other ingredients in separate papers.

Were they calculated easily to take fire?—Yes, I think they were; I tried some in the fire, and it burnt.

Besides this, what else did you find in the baskets?—There were some steel filings.

Were there any hand-grenades?—Yes, there were.

How many?—Ten, I think grenades.

What else were there?—Three papers of rope-yarn, and other ingredients.

Having that paper in your hand, read what was contained in one basket, and what was contained in the other?—Nine papers of rope-yarn, and tar and other ingredients, some steel filings, in one basket; in the second basket there were four grenades, three papers of rope-yarn, tar, and other ingredients, two bags of powder, one pound each.

What kind of bags were these?—White flannel bags.

About six inches long?—About six inches long, or rather longer.

And contained gunpowder?—Yes.

Were there any flannel bags that had no powder in them?—Five flannel bags empty.

Of the same form?—Of the same sort.

Any thing else?—One small paper of gunpowder, one leather bag containing sixty-three balls.

Leaden balls, bullets?—Bullets; that is the whole that was contained in the second basket.

Did you find any thing else in the room?—One iron pot.

Did it appear that that iron pot had had tar boiled in it?—Yes, very recently; and one pike handle I found in the same room.

Was there a ferrule at the end with a socket?—Yes, there was.

A rough stick?—Yes.

Was that all that you found at the lodgings at Brunt's?—That was all.

Did you afterwards go to Hole-in-the-wall passage to Tidd's?—Yes, I did.

How soon afterwards?—It might be three quarters of an hour, or an hour after; it was about nine o'clock in the morning I was at Tidd's.

Did you search these lodgings?—I did.

What did you find there, have you got a list of them?—Yes.

Read them in order?—Four hundred and thirty-four balls, in a haversack. One hundred and seventy-one ball cartridges,

Loose were they?—Loose; Sixty-nine ball cartridges without powder; a brown paper parcel, with three pounds of gun-powder; in a brown paper, there was ten grenades: eleven bags of gun-powder, one pound each.

Were the bags constructed in the same way as the flannel bags that you found at Brunt's?—Yes, the very same.

About six inches long?—Rather longer.

With a pound of gun-powder in each?—Yes.

Any bags of the same description empty?—Ten flannel bags empty; a small linen bag with powder, a powder-flask with some gun-powder in it; sixty eight balls.

By that you mean bullets, I suppose?—Yes. Four flints, and twenty-seven pike-handles.

Were the pike-handles of the same description as you have already mentioned?—The very same.

Rough sticks, four or five feet long?—Yes.

With sockets at the end for a pike?—Yes.

Did you find any box there?—I found a box containing nine hundred and sixty-five ball-cartridges.

Was that all that you found at Tidd's?—That was all I found.

Samuel Hercules Taunton cross-examined by *Mr. Adolphus*.

There has been a person named Palin mentioned in the course of this cause; have you made any search after him?—Yes, we have.

There is a large reward of 500*l.* for apprehending him?—Two hundred pounds reward.

Palin and Cook; have you searched after them too?

Mr. Solicitor General.—Have you personally searched after them?—Not I. I have not.

Mr. Adolphus.—Has search been made after them by the officers?—I do not know what the magistrates might have ordered.

Samuel Hercules Taunton re-examined by *Mr. Solicitor General*.

A reward was offered for Palin?—Yes.

Has he absconded in consequence of the part he took in this transaction?—Yes.

Mr. Curwood.—He has absconded, that is all.

Mr. Solicitor General.—The reward was to apprehend him for the part he took in this business?—Yes, it was.

Daniel Bishop called.

Mr. Gurney.—It is necessary now to produce the things found at Tidd's, and also at Brunt's, and in Cato-street.

Mr. Curwood.—It is candle light, it will do in the morning.

Lord Chief Justice Dallas.—Have you no other witness?

Mr. Gurney.—Only one or two; their evidence will be very short; we will produce them in the morning.

Lord Chief Justice Dallas.—Gentlemen, it is quite impossible to conclude to-night; we must now adjourn to nine to-morrow morning.

[Adjourned to to-morrow morning, nine o'clock.]

SATURDAY, 22nd APRIL, 1820.

James Ings was set to the bar; and John Thomas Brunt, Richard Tidd, William Davidson, James William Wilson, John Harrison, Richard Bradburn, John Shaw Strange, James Gilchrist, and Charles Cooper were placed at the bar behind.

Daniel Bishop sworn.—Examined by *Mr. Gurney*.

Did you apprehend Arthur Thistlewood?—I did, on the 24th of February.

At what time of the day?—Between ten and eleven in the forenoon.

Where did you find him?—At No. 8, White-street, Little Moorfields.

Was that his own residence, or the house of another person?—The apartments of a Mrs. Harris.

I believe he lived in Stanhope-street, Chancery-market?—He did.

Did you find him up, or in bed?—In bed.

With any part of his clothes on?—His breeches and stockings.

Upon your opening the door of the room in which he was in bed, what took place?—He just held up his head.

From under what?—From under the bed-clothes. I had got a pistol in one hand, and a staff in the other, I immediately threw myself on the bed upon him; I said, "Mr. Thistlewood, my name is Bishop, a Bow-street officer, I have a warrant against you."

And he surrendered?—He said, "I shall make no resistance."

Were his coat and waistcoat by the bedside?—They were.

Did you find any thing in the pocket of the waistcoat?—In the pocket of the waistcoat I found three leaden balls, a ball-cartridge, a blank cartridge, and two flints, and a small silk sash.

You took him into custody, and took him to Bow-street?—I did.

Daniel Bishop cross-examined by *Mr. Adolphus*.

How did you find out where he was?—It was in consequence of some information that was handed to me and my brother officers.

Information that he was not at his own house but was there?—Yes.

Was that information from your brother officers?—No, it was not.

Was it from a *Mr. Edwards*?—No.

Mr. Gurney.—I should have objected to that question.

Lord Chief Justice Dallas.—That is not a proper question.

Witness.—I do not know a person of that name.

Mr. Adolphus.—I should not have asked it if I had considered it irregular; but the moment your lordship gives that intimation, I stop.

Lord Chief Justice Dallas.—If these questions are to be asked it will break down all rules.

Mr. Adolphus.—I submit, my lord, to the intimation of your lordship's opinion.

George Thomas Joseph Ruthven called again.—
Examined by *Mr. Gurney*.

Are there now placed upon the table the things which were taken in Cato-street.—Yes.

You gave us an enumeration yesterday of thirty-eight ball cartridges, firelock and bayonet, one powder flask, three pistols, and one sword, with six bayonet spikes, and cloth belt, one blunderbuss, pistol, fourteen bayonet spikes, and three pointed files, one bayonet, one bayonet spike, and one sword scabbard, one carbine and bayonet, two swords, one bullet, ten hand-grenades; I do not see them?—Here they are [*in a bag*].

We must have them on the table. [*they were emptied out.*]

There is one hand-grenade much larger than the rest; that is what you call the large hand-grenade?—Yes.

Show the jury the fuse to it? [*it was shown to the jury.*].—There are some iron spikes tucked in.

Hand one of the small hand-grenades to the jury with a fuse? [*it was handed to the jury.*].

Are there any fire balls there? [*one was shown to the jury*].—I will give you an account gentlemen, by another witness, of the composition of these, I observe here are some bayonets with screws at the end, and some sharpened files with screws at the end?—There are [*they were shown to the jury.*].

Produce the pike staves?—[*they were produced.*] Take one of the pike staves from the rest, and show the adaptation of it, [*the witness screwed in one of the pike heads*]. They are all made to receive a screw?—Yes.

Have they a ferrule at the top?—They have.

Will you produce the belt and the knife-case found upon the prisoner? [*they were produced.*] Hand that knife with the knife-case and the belt to the jury: you observe, gentlemen, the knife-case and the belt are of the same cloth.

Ings.—The knife was not found upon me, my lord.

Mr. Gurney.—You observe the handle of the knife, gentlemen, is bound round with wax-end? [*it was shown to the jury.*].—Where are the two haversacks that were found upon the prisoner? [*they were handed to the jury.*] Show the jury the brass-barrelled blunderbuss, [*it was shown to the jury.*].—Which were the pike staves found in Cato-street?—The bundle I have just shown.

John Hector Morison called again.—

Examined by *Mr. Gurney*.

In whose service are you?—*Mr. Henry Underwood's*, in Drury-lane.

You have spoken to a sword having been brought you by the prisoner to sharpen?—Yes.

Is that one of the two swords which the prisoner brought to you?—Yes, this is the first.

What were the instructions you had particularly respecting sharpening that sword?—To grind and set it from the heel to the point, and to sharpen the point particularly on both sides, as sharp as a needle, he said.

And it is sharp?—Yes; since I ground it, it appears to have been rubbed upon a stone to help the keenness of the edge.

Samuel Hercules Taunton called again.—

Examined by *Mr. Gurney*.

Have you there the things which you found at Brunt's room?—I have.

Produce them distinctly?—This basket contains nine papers of rope-yarn, tar, and other ingredients.

A Jurymen.—They appear to be the same kind of things; they are what are called illumination balls.

Witness.—There are also some steel filings.

Mr. Gurney.—Now produce to us the things out of the basket covered with the blue apron?—These are flannel bags full of gunpowder; there are also some empty [*producing them*].

A Jurymen.—There is powder in those bags. There is. [*One of the bags was opened, and the contents shown to the jury*].

Mr. Gurney.—The bags contain one pound each, I believe?—Yes.

Are there four hand-grenades?—There are [*they were handed to the jury*].

A Jurymen.—There appears to be nails in all directions.

Mr. Gurney.—We will call a witness who will give an account of their contents. Will

you produce the pike-handle which was found there? [*it was produced.*] Is that filed at the end so as to receive a pike?—Yes, and it has a ferrule on.

You spoke of an iron pot, that had an appearance of melted tar. [*it was produced.*] Is there tar in the bottom?—There is.

You found also sixty-three bullets?—I did; here they are. [*producing them.*]

They are in a leathern bag or pouch?—They are.

Produce the things which you found at Tidd's lodgings: those were found the same morning, the Thursday morning?—Yes.

You stated that in a haversack there were 434 balls; 171 ball cartridges, and 69 without powder. [*the witness produced the same.*] There were three pounds of gunpowder?—There were. [*producing them.*]

You have opened that paper?—I have, and it contains gunpowder.

Mr. Gurney.—It shall be opened for your inspection, if you wish it, gentlemen.

Foreman of the Jury.—No, it is not necessary.

Mr. Gurney.—Produce the coarse canvass cloth, and the grenades you found in it; eleven bags of gunpowder of a pound each; ten empty bags; a small bag with a powder flask with some powder?—Yes.

Those are flannel bags of the same description as the other?—Yes, they are.

The full and the empty are all of the same description?—They are.

You found there, also, twenty-seven pike-handles?—I did.

Are they of the same description as the others?—They are.

Mr. Gurney.—You observe, gentlemen, they are all ferruled, and filed to receive pikes?—They were all of them ferruled, but with the greenness of the wood some of the ferrules have since dropped off.

Produce the box you found with the ball cartridges [*it was produced.*]. There are 965 ball cartridges in that box, are there?—There are.

They are in parcels of how many?—In parcels of five.

George Thomas Joseph Ruthven, called again.
—Examined by Mr. Gurney.

There is one question I omitted to ask you: were those fire arms found at Cato-street, loaded?—They were most of them: there were one or two of them fired off.

Most of them you found loaded?—Yes.

They were drawn last Monday?—Yes.

Lord Chief Justice Dallas.—Ask him whether those which were not loaded, appeared to have been recently fired off.

Mr. Gurney.—Did those which were not loaded appear to have been recently discharged?—I did not examine that.

Were those that were loaded, loaded with ball?—They were.

Serjeant Edward Hanson sworn.—Examined by Mr. Gurney.

I believe you are a serjeant in the Royal-artillery?—Yes.

Have the goodness to look at those fire-balls, what do they appear to be composed of?—They are oakum, tar, and rosin.

If they were set on fire, and thrown into any buildings, are they well calculated to produce conflagration?—Yes, they would set wood on fire.

If they were thrown through a window on to a floor, would they be likely to set a house on fire?—There is not a doubt of it.

If thrown into a hay-loft, still more likely?—Oh yes.

How long do you suppose they would burn?—This is a very small one; I have seen much larger than this, among those before the court.

How long would they burn?—They would burn three or four minutes.

Look at these flannel bags with gunpowder?—That is a flannel cartridge, for a six-pounder.

That is the way in which powder is made up, for the purpose of loading cannon?—Yes, it is; only yours is a different kind of flannel, it is twilled.

That will answer the purpose, though not so neatly?—Oh yes, perfectly.

Take one of the hand-grenades; you have examined two of them before?—Yes, I have.

Take that to pieces, and show us of what it is composed [*it was taken to pieces in the presence of the Jury*]. The other prisoners may retire now, we shall have no occasion for their being present.

Lord Chief Justice Dallas.—You may now remove the other prisoners from the bar. [*They were removed accordingly.*]

Mr. Gurney.—Is that exterior tight binding material to give force to the powder when it explodes?—Yes, very material, it would not have half the effect if it were not tight.

Have you come to any thing different?—Yes, here is a bandage of woollen cloth of bombazine.

Is that cemented on?—Yes, very fast.

What do you find that immediately to inclose?—Four nails.

Do you mean nails used to rivet the tire of cart wheels on?—Yes [*it was handed to the Jury*].

Supposing you found inside that a tin case containing powder, which is lit by means of that fuse; would that explode and disperse those nails about like so many shot?—Certainly it would.

The binding you say by the rope-yarn would give greater effect to the explosion?—Yes, it would be a larger explosion; the faster it is tied, the more strong that makes the explosion.

A Jurymen (Mr. Young).—Could any body manufacture a thing of that kind, unless he is

connected with the army?—That is nothing like our artillery-grenades, these are filled with pistol or musket balls, and then the vacancy between the musket balls, is filled with powder.

Mr. Gurney.—It is not made artificially like the army-grenade?—No.

A Jurymen (Mr. Smith).—Would it have the same effect?—Certainly, this would be very dangerous; they would be sure to be distributed round wherever they were thrown.

Mr. Gurney.—Supposing they were thrown into a room, the fuse would burn, I believe about half-a-minute?—Yes, thereabouts.

These nails would on the explosion, fly about killing and wounding the persons in the room?—Most assuredly.

Take out the nails and see whether you find a tin case filled with gunpowder?—Here is part of a blanket covering the tin case.

The fuse is inserted in the tin case?—Yes, it is brazed in, and each end is brazed on.

We will trouble you to force open that tin case. [*the witness broke off the fuse and poured out the powder.*]

How much powder is there in it?—I dare say there is about the same quantity as there was in the last, which I weighed; that was about three ounces and a half; it appears to be the same size.

Is it good gunpowder?—Very good.

That would be a quantity of gunpowder sufficient to cause the explosion you speak of?—Yes, there is rather more than we put to burst a nine-inch shell.

I need scarcely ask you, whether that grenade would be a most formidable and destructive instrument?—It certainly would.

Mr. Attorney General.—That, my lord, is the case on the part of the Crown.

DEFENCE.

Mr. Curwood.—Gentlemen of the jury;—I know not whether any of you were in court during the inquiry which has already taken place; but, whether you were or were not, the fact of the conviction which has occurred cannot be unknown to you. Indeed, my learned friend the Solicitor-general, when he opened this case to you, did that which every man would expect from him—he told you that if that fact had come to your knowledge, it ought not to have the slightest weight on your minds in the consideration of the case which is now brought before you. But notwithstanding that my learned friend the Solicitor-general has so told you, I do feel, or rather I should feel under other circumstances, that it was a fact which would weigh very heavily upon me: because I know that however good your intentions may be, such is the frame and construction of the human mind, that it cannot dismiss from its consideration matters which at times, if men were more perfect, it ought to dismiss. But I feel that fact weighing less heavily upon me, because the late verdict was obtained by evi-

dence, as I hope I shall be able to show you, materially different from the evidence which is given in this case. For in this case there is wanting a most material confirmation of the evidence of the accomplice, which was given by a witness who was called in the last case, and is not called in the present: I mean one Dwyer.

Mr. Attorney General.—My lord, I must interpose for the sake of regularity.

Lord Chief Justice Dallas.—We cannot go into what passed on a former trial. The Solicitor-general most humanely and most correctly began by deprecating the effect of that conviction in any way upon the minds of the jury; and sure I am, that though that caution might be deemed by the Solicitor-general to be necessary, it was not necessary with the jury, for they would themselves have confined their attention to the evidence in this case, without at all regarding what passed upon a former trial which is not now before them, nor under their consideration; and whether this or that witness was then called, or whether the proof be now different, they have no means of judging, and into these matters I cannot now suffer counsel to go. The jury are sworn to try the case presented to them in evidence. I need not tell you, gentlemen, I am sure, that it is your duty to forget, except so far as it is in proof, that there is such a person as Thistlewood—at all events to forget his conviction.

Mr. Curwood.—Gentlemen, I receive, with all deference, the correction of his lordship, and I am sure I need not say to him, that I did not intentionally step beyond the line which I ought in correctness to pursue. Perhaps, in the anxiety I feel on the present occasion I may have done that which, if I had more self-possession than I confess I have at this moment, I should not have done. But, when his lordship has told me, that I have trespassed beyond the strict line of my duty, it shall be my most earnest endeavour so to guard my conduct, that I may not repeat the same fault. But this much I may with perfect regularity say, that you will not suppose (having heard of the former verdict) that it proceeded upon evidence precisely such as has been given in this case. You will not suppose that the evidence which warranted that former conviction is precisely the same as is now before you. But you will judge of this evidence as though you had never heard of that former case.

My learned friend, the Solicitor-general, has told you (what I, and I am sure all men will readily admit) that in the execution of the duty which he was called upon to perform, he was only anxious to acquit himself as a faithful servant of the public, by presenting fully and fairly the circumstances of this case for your consideration, and that as far as his own personal feelings went, when he had done his duty, he was regardless of the result. Gentlemen, I, equally with every man who knows him,

give him full credit for that assertion ; I hope you will give me credit also, by believing (though my task is a more irksome one than his) that I have the same feeling, that I am anxious to do my duty to the unfortunate man at the bar ; but, I am also anxious at the same time, to do my duty to my country and myself. I am equally sure, that those amongst you who having been on the former jury, and consequently having heard the evidence, and given a verdict in the former case, whatever may have been your previous feelings and impressions, will discharge your present duty, regardless of what may be said by mankind upon any supposed contradiction of conduct, and that if you are not satisfied that the crime is proved against the prisoner by the present evidence, you will gladly deliver him by a verdict of not guilty.

The Solicitor-general also told you that the law in this case is so clear, that he did not feel it necessary to state it to you. The law of this case is very clear, but I think it most material that the very precise point you have to try should be stated to you. Because, the question here is not between guilt or innocence in the abstract, for certainly, I must admit, there is a strong suspicion, at least, if not conclusive proof, of a certain degree of moral guilt against these men ; but the question you have to decide is whether their guilt amounts to that which is charged upon this record ? namely, whether it be high treason ? and not only whether it be high treason, but whether it be that specific and direct high treason which is charged upon him by this indictment ? In order, therefore, to enable you to do your duty fairly, fully, and impartially, you must not only take into your consideration, and understand distinctly, what is the precise charge you have to try, but you must also apply the evidence and see that the evidence not only makes out guilt, but makes out that very specific high treason which is charged upon these men.

I dare say, though you are not lawyers, you know enough of the history of your country, to know that almost every man who has written upon the history of the constitution of our country, has stated that the firmest bulwark of the liberties of the subject is, that the law of high treason should be well defined : and most carefully was that done by our ancestors, by the statute of 25 Edward 3rd. Many things had before that time grown up to be thought treasons, many indistinct accusations had been adjudged treasons, so that no man could know whether he was safe or not from the oppression of power, in his conduct through life.—But when that statute was passed, in a few short and distinct words, it gave the subjects of the country to know what the law of treason was, and better still, it informed them what was not treason. A statute which one of the greatest lawyers that ever graced the English bench, my lord Coke, has called a blessed statute ; and blessed is the country that has such a statute for its guidance, for in proportion as we lose

the advantages of that statute, in that proportion do we recede from that blessed state of security, which it conferred upon us.

That statute says distinctly (I mean to state as much of it as may apply to the case under consideration), first, that whosoever shall compass or imagine the death of the king, shall be guilty of high treason :—secondly, that whosoever shall levy war against the king in his realm, shall be guilty of high treason. Now here are two distinct facts stated in a few short and distinct words ; men cannot fail to know whether they transgress these enactments, or not ; and, although, from that period to the present, a number of other treasons have grown up, or rather a number of other enactments of treason have grown up at different times ; yet, always, under virtuous administrations, and by patriotic governors, they have been swept away as noxious weeds, poisoning the healthy soil of our country, and we have invariably returned to that blessed statute in every good and sound state of the constitution.

I lament to say, that in the reign of his late majesty, a statute passed which extended the law of treason ;—Mr. Attorney-general seems rather surprised at what I am now saying, but I repeat that I lament such a statute ever passed ; I lament every deviation from the ancient law of treason ; and even if it be justified on the ground that the necessity of the times called for it, then I lament that there should exist such a necessity in the state.—The latter statute to which I allude, and upon which a part of the charges in this indictment is founded, is the statute of the 36th of his late majesty's reign, which enacted "that if any person after the passing of this act, during the life of the king, and until the end of the next session of parliament, after the demise of the crown, shall within the realm or without, compass, imagine, invent, devise, or intend death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint of the person of the same, our sovereign lord the king, his heirs and successors, or to deprive or depose him, her, or them from the style, honour, or kingly name of the Imperial Crown of this realm." Now here is created another new treason, and which is also charged upon this indictment ; by the statute of Edward it was made treason to compass or imagine the *death* of the king ; by this statute it is made treason, to conspire or attempt to *depose* him from his kingly office.—By the statute of Edward it was made treason, actually to levy war against his majesty within his realm ; by this statute it is made treason to *conspire* to levy war—and upon this last treason is founded another count of this indictment ; so that the four questions you have to try will be these.—Did the prisoner at the bar, compass or imagine the death of the king ? did he conspire to depose him from his imperial dignity ? did he actually levy war against his majesty ? or lastly, did he *conspire* to levy war (though he did not actually levy war) with an intent to

compel by force his majesty to change the measures of his government. These are the precise issues you have to try, and whatever may be your opinion of the guilt of the prisoner as to other matters,—however atrocious you may think his conduct may be in a moral point of view,—however criminal he may be in other respects,—however he may have brought himself within the fangs of other criminal laws,—if you do not think he has actually committed one of these four offences, charged upon him by this indictment, you are bound to find him not guilty; and to leave him to take his trial upon other indictments, which will reach him, if he has been guilty of any other offence.—It will therefore be your bounden duty, most accurately to scan the evidence which has been given in this case, and apply it to the charge of the present indictment, and not to any other offence.

My learned friend, the Solicitor-general, has admitted to you, that this case does not come proved to you in all respects by unequivocal testimony; and he apologizes for this by saying, that in all cases of conspiracies you must of necessity call some of the conspirators, because without some of the conspirators you cannot know what passed in their dark consultations. This is another miserable consequence of departing from the ancient and well-considered statute of treasons. That admirable statute, amongst other things, enacts, that before a man shall be found guilty of any of the treasons there set out, he shall be *provably* convicted of the same. I do not believe in any other statute of the realm, that the same guarded caution is enacted, or the same word used; and the great lawyer to whom I have referred you before, lord Coke, writes a whole section upon the word *provably*. He says that it does not mean *probably*, but that a man must be convicted by that clear and distinct evidence which no man can doubt of. While that law remained unimpaired, the result was, that you could have no accusations of treason, but such as were capable of clear and demonstrable proof. Then men's lives were safe. But when you depart from the spirit of that ancient statute, and enact these new treasons which depend upon supposed conspiracies and secret consultations, you must call in the aid of witnesses such as you have heard upon the present occasion. Then it is that men's lives are no longer safe, but they may hold their existence, fame, and fortune, upon the testimony of the most worthless and infamous of mankind.

Bearing in your minds, as I hope you will do, these preliminary observations, examine the facts that have been proved in evidence before you, and say how far you think those witnesses, whom my learned friend the Solicitor-general admits to be bad witnesses, are confirmed by purer testimony; because he has told you himself that they are not to be believed unless they are confirmed in material circumstances. It is not confirming an infa-

mous witness in some trivial circumstances, that will give him credit to any infamous tale he may tell you: you, at least, ought to have him confirmed as to so much of the important matters which he relates, that you, laying your hands on your hearts, can say you believe the rest of his tale. And here another difficulty in this case presents itself, for it would be in vain for me to stand up and say, these witnesses are not confirmed in a great deal of important matter: but you are to discriminate whether they are confirmed in any of that matter which constitutes the crime, high treason. If you do not find them confirmed in a single iota of that matter which alone constitutes high treason, though they are confirmed in other matters, it will be your duty to find this man not guilty. And here is the danger (and let me warn you of it as one) of not discriminating clearly to what extent they are confirmed. If you shall be of opinion they are confirmed to the full extent of the horrid plan of the assassination of his majesty's ministers, yet, inasmuch as I do not know of any law which makes that atrocious plan of assassination of the cabinet council amount to high treason, if you do not believe that there was an ulterior intention to levy war against his majesty, then you must find the prisoner not guilty.

It is impossible for me to deny that there is a great deal of matter in evidence before you which must make a man shrink back with horror; but if it were not for that circumstance which throws a shade over the whole of the case, I think there never was so ridiculous a plot detailed in evidence since the records of history began. It exceeds in absurdity all that was ever recorded in real history, or imagined in fiction. The plot which has been detailed to you to-day, and which you are required to believe was actually adopted as of practicable execution, for the purpose of overturning the existing government of this country, is a plot so perfectly ridiculous, that it is wholly incredible. I would ask you this, if you had been told of this scheme of rebellion as a really existing and adopted plan;—if it had been gravely related by a man of ordinary veracity, in whom you had ordinary confidence, unconnected with all the other circumstances of assassination, and the murder of the unfortunate man who met his death at Cato-street (all of which I know must have its effect upon your minds, and adds weight to the ulterior charge of treason),—I ask you if you had been told of this plot to overturn the government, precisely in the phrase and language of the witness, with the same exhibition of military stores, would not you have received the tale with a smile of contempt and incredulity? Then, if you would not believe a statement on the relation of a man in whose general veracity you might have some confidence, will you believe it upon the testimony of a self-confessed and most infamous witness? The absurdity strikes me so strongly, notwithstanding

all I have seen, and all I have heard, that until you tell me by your verdict you do believe it, I will not give credit to the possibility of your having such belief.

We will first see what the alleged facts are as detailed to you by this man Adams. And here let me remark, that every witness is supposed to give his testimony under the sanction of an oath, the consequences of which he at least ought to believe are, that according to the truth or falsehood of the circumstances which he relates he will meet his reward, not only by the sanctions of the law of men, but by the special interpositions of Providence in this world, and by the laws of God hereafter. To begin with this witness,—what does he tell you?—that he has been an apostate in religion, and has forsworn his God; that God to whom he appeals for the truth of his evidence! That is the first view in which this witness presents himself. Such is the man who has to tell you a story, incredible in itself, and upon whose testimony you are required to believe it. But to proceed, he says that he became acquainted with Brunt, one of the other men charged in this indictment, at Cambridge, in France, about three years ago; that on the 13th of January last he was introduced to Thistlewood; upon which Thistlewood said to him:—"Oh, you are the man; you have been a soldier in the Guards." We need not go through the whole of the conversation, for it comes to this.—"I suppose you are a good swordsman."—"No, I am not so good a swordsman as I once was, but I can defend myself." And then comes the conversation about the present state of society; that "the people are aristocrats, and are all working under one system to support the government." Now you are to take it as a clear fact, that a plot was in agitation to overturn the government, and that so much was to be expected from the hand of this single swordsman, that Mr. Thistlewood,—a man not insane, however wicked,—at once unbosoms himself to him at their first interview, and tells him he wants his assistance, as you are to infer, though he did not directly tell him so in terms:—that he wanted his assistance to overturn the government—the powerful assistance of him, a single swordsman!

Then he gives you an account of his meeting the conspirators several times at the White Hart public-house, and then he goes to Brunt's, where he hears language, such, that if he had had one spark of honesty or feeling in his heart, he never would have gone a second time, but must have instantly disclosed it to the magistracy of the country. He there hears distinctly, according to his own account, a plan in agitation for the destruction, at one blow, of the whole of the cabinet council of this country. Does he revolt at this?—No! he goes on and joins them; he meets them day after day in their consultations on this plan—himself professing, and, if you believe his own words, truly intending at this time to

be one in this atrocious conspiracy, fully bent to carry it into effect; and never does he till the halter is about his neck recede from that intention. And then he thinks to make a merit—by what?—by still greater baseness I had almost said,—when I say, "still greater baseness," I am afraid of using an expression that can in the least be supposed to take off from the baseness of his first conduct,—I hardly know how to express myself;—I was going to say, greater baseness in betraying his companions. I am afraid, in using the expression, of being supposed to say that such things as these ought not to be disclosed: but this I say, that in a man who goes the whole length, which he states he did, towards perpetrating a deed of unparalleled wickedness—in him it is the last trace of baseness that he should be the betrayer of his companions; low as they may be sunk in the pit of infamy, a still lower deep is his portion: and not one spark remains which can redeem him from universal and unutterable abhorrence. Thus it is, that this man stands before you, and upon his evidence alone it is, I say, that all the facts stand which constitute high treason, as I will shew you hereafter, and it is upon his evidence alone that you must convict the prisoner of high treason; although I admit his evidence is abundantly confirmed, as to the other parts of the case, namely, as to the horrible plan of assassination.

You will always bear in mind what it is that constitutes the treason. I have told you that every act of levying war against the king, or conspiring so to do, with an intention by force to make him alter his measures of government is high treason. Now all which you can infer against this prisoner of his guilt, with respect to this species of high treason, is from certain supposed conversations on Tuesday the 22nd, and Wednesday the 23rd of February. Adams tells you, that in addition to the plan to assassinate his majesty's ministers, they had it in design to do what?—to seize two cannon in Gray's-inn-lane; to seize six cannon in the Artillery-ground; to send to different out-ports, and seize those out ports. But that which most distinctly marks the intention of high treason, was a proclamation which he is pleased to say was fabricated by Thistlewood, and of which proclamation there is not a trace of confirmation in any other part of the cause. Now I know that the learned Attorney-general may say there is confirmation of this by an unsuspected and uncontaminated witness. He will tell you that Hale, the servant of Brunt, was called to fetch six sheets of cartridge-paper; and he will tell you also, that the witness, Adams, said the proclamation was written on cartridge-paper. Gentlemen, is that a confirmation of the contents of this supposed proclamation? You do not want confirmation of the fact of six sheets of paper being sent for; consider what they were about at that time:—they were preparing their arms, not for the plan of high treason, as

I say, but for other most nefarious plans; they were then making cartridges, and what so fit, and what so likely, as that they should want cartridge-paper for that purpose?—And, indeed, there is a passage in the testimony of Hale, which, as far as it gives confirmation either way, gives a confirmation to my statement, rather than to the supposition of the learned Attorney-general; for Hale tells you, that among the articles in the cupboard they found fragments of the cartridge-paper; most evidently, therefore, they had been using this cartridge-paper, not for the purpose of fabricating proclamations, but of fabricating cartridges. Take this proclamation out of the cause, and there is nothing that can indicate that their intention was levying war against the state, so as to make their acts amount to high treason. There is a great deal in the cause to lead one to suppose, that they might contemplate a desperate riot, and a dreadful murder; that you might perhaps fairly infer, if that were the matter for your consideration; but that is not the charge upon this record: if you believe every tittle of the evidence up to that extent, yet you cannot consistently with your duty to God, to your country, and to yourselves, find the prisoner guilty of an intention to levy war; even if you could believe the other circumstances, that they meant to take the cannon, that they meant to fire the houses, and that they meant other acts of violence, which do not amount, or may not amount to a levying of war. And what you are most particularly to guard yourselves against is this, that you are not to convict on constructive high treasons. I know very well that there have been constructive levyings of war, but still levying of war is a question of fact. You are to consider, under all the circumstances, what shall and what shall not amount to a levying of war: there are great and dreadful riots which do not amount to levying of war, and if you are of opinion this would be only riot and not levying of war then the prisoner is not guilty of the matter of this Indictment. When I say there may be great and dreadful riots which do not amount to levying of war, and that you ought to be most careful about extending the law of treason by construction and implication, I would rather state it you from the language of one of the greatest judges that ever adorned the English bench, aye, and one of the best of men;—I mean my lord Hale, whom bishop Burnet calls “that great lawyer, and that honest man:” an honest man he was as you will judge from this short anecdote I will tell you of him. During the usurpation of Cromwell, so high was his credit as a lawyer, that that great and able man (for so he was, though an usurper) felt it for the honour of his government to employ my lord Hale; though my lord Hale had the boldness to tell him, that he doubted the legality of his accession to the throne of power where he had seated himself, and would act under no commission from

him which should require him to pass a sentence of death on any man; notwithstanding this, he was so highly revered by that usurper, that he was made chief justice of his Court of Common Pleas. Still higher was he honoured by his legitimate sovereign, when restored to the throne of his ancestors; he was placed in a more exalted station. But under both governments he was an honest man, who never warped the law to serve the power of the usurper, or gratify the wishes of the dissolute ministers of the monarch. He never forgot his duty to his country, but was ever the firm friend of the legal liberty of the subject. I will tell you with respect to constructive treasons, what that learned judge and good man says. He states that the statute of Edward is distinct with respect to the levying of war, but he says, levying of war may be actual or *constructive*; that is, constructive such as great riots, or for general purposes; but he shews what he thinks of those lawyers who have extended the simple law of treason by implication and construction. And with respect to constructive treasons, I will myself say, and I am sorry to say it, they have been the device of bad lawyers to further the oppressions of wicked statesmen. Judges of the present day must be bound by the resolutions of their predecessors, and take the law of treason as they find it recorded; so says lord Hale, who, after having stated several constructive treasons, says, “These resolutions being made and settled, we must acquiesce in them,”—he says not a word of their propriety, or of his approbation of them, but you may see plainly what was the bearing of his own mind.—These resolutions being made and settled, we must acquiesce in them; “but, in my opinion, if new cases happen for the future that have not an express resolution in point, nor are expressly within the words of the statute of 25th Edward 3rd, though they may seem to have a parity of reason;—it is the safest way, and most agreeable to the wisdom of the great act of 25th Edward 3rd, first to consult the parliament, and have their declaration, and to be very wary in multiplying constructive and interpretative treasons, for we know not where it will end.” Thank God, gentlemen of the jury, it is in your power to put a stop to their dangerous progress:—if you find verdicts on these constructive treasons, God only knows where they may end; but once let English juries oppose them firmly by their verdicts, and whenever they have a case of constructive treason brought before them, of which the Crown lawyers can shew no precedent exactly in point, let them exert their glorious privilege, and deny to them a verdict of guilty on such constructive treasons. Do this, gentlemen, and save your country. You thus interpose an impenetrable barrier against the progress of power. I am one of the last men in the world to ask you to do any thing that should shake the confidence all men have in the laws; but I do ask you, feeling that I am doing my duty, to oppose yourselves to this dangerous tribe of

constructive treasons; and if my learned friend the Attorney-general cannot show you an exact precedent in point, rather than follow his advice, follow the advice of that great and learned judge, oppose the constitutional barrier of your verdict to it, and rear up no more constructive treasons.

There is in this case so much matter of grave and serious import, that I cannot treat the other part of the case which remains with the levity and ridicule with which it well deserves to be treated,—I mean so much of the plot as relates to the overthrow of government. Good God! is it in a British Court of Justice that we are trying a plot for the overthrow of the British government with materials of war such as those lying before you? What is the greatest number of men that we have it in evidence were to be brought into the field for the destruction of this mighty empire?—Forty men! What were those forty men to do?—They were first to assassinate the whole cabinet council; they were to send a detachment to seize two pieces of cannon—not a single horse among them: they were to send another detachment to seize other six pieces of cannon! they were to seize on several out-ports! they were more particularly to take Brighton with a force; the detachment for this purpose, I presume, was to have gone down on the outside of some one of the quick travelling coaches, and to have taken the town by surprise! They were to surround London, as I believe it is stated in the evidence in this cause, that they were to be so much on the alert with the residue of their forty men, that not even an orderly was to be allowed to leave London for Windsor; but that truly even if an orderly were despatched, and were lucky enough to evade their vigilance and reach Windsor, they had nothing to fear, for the troops, having been up all night at the funeral of his majesty, could not return to town time enough to rescue London from the hands of this formidable band of warriors! Such is the story upon which you are to find these men guilty of high treason!

I have told you that there is no confirmation of that part of the story which relates to the facts constituting high treason, and that (though it may be tedious to you to repeat it so often) is the very essence of this cause, and which you should never dismiss from your minds. You are to look how far this man is confirmed; if he is merely confirmed up to the point of the assassination (which perhaps I may admit, for what is found in Cato-street, and the occurrences which there took place, may confirm him up to that extent), there remains no confirmation upon that part of the case which alone you are now called upon to decide, and on which alone you can say high treason was in the contemplation of these men. But before I dismiss the evidence of this man—(and I do it with the less reluctance, because my learned friend who is to follow me, though we came late instructed into the cause, yet, from the respite the Court granted him the other night,

came so well prepared that it relieved my mind from the grief I felt from not being able to do my duty in the manner I wished to have done it, though I have omitted a great deal, there is but little my learned friend will omit; you will hear from him the evidence most minutely dissected in every part).—But, before I quit this man, let us seriously pause.—Who is he that tells us this tale, and demands our belief in his testimony? Who is this man? Let him answer for himself; he stands here upon his own confession—a betrayer of his companions!—a traitor to his king!—a rebel against his country!—an avowed intended murderer and assassin!—an apostate from his religion!—and a denier of his God!—Good heavens! Is it in a British court of Justice?—Is it here where we have met to administer justice according to the manner of our forefathers in this her ancient sanctuary?—Is it here before a British jury that the lives of eleven men are to be sacrificed, upon the evidence of such a witness, and not merely their lives, but—if the law is to be literally put in force—their lives with torture? Can a British jury condemn their countrymen to death and torture—their names to eternal infamy—and their families to utter ruin, upon the evidence of such a self-convicted wretch as this?

As I prefer, upon all occasions, the authority of great men, I would refer you, in this case, to what I have heard fall from my learned friend the Solicitor-general, without alluding to what cause, or when it was, or how long ago. But, upon an occasion when a witness was called to prove that another witness was not worthy of being believed upon his oath, the witness called to impeach the credit of the other, upon his cross-examination stated, that the man who he said was not worthy to be believed upon his oath, had made a proposition to him to go together into the park, for the purpose of extorting money from others by certain nefarious threats, and that he went with him but without having committed any guilt of that sort. When the Solicitor-general came to comment upon this testimony* the natural feelings of his mind broke out, and his exclamation was, “would an honest man, entitled to credit in a court of justice, act the part that this witness has acted?”—namely: would an honest man, entitled to credit in a court of justice, for a moment assent to a proposition to extort money from another? Then let me apply this reasoning to my learned friend.—Is the witness that he has produced—is a man who could act the part he has acted, entitled to credit in a court of justice? Is an apostate! a traitor! a rebel! a betrayer of his companions! an assassin! a murderer! all of which this witness Adams admits that he has been, and intended. In the language of my learned friend, is such a man entitled to credit in a court of justice? And yet my learned friends, the officers of the Crown, put up such

* See the preceding case.

a man this day (or at least yesterday) as a man worthy of credit in a court of justice. Can he be worthy of credit, unless indeed (which I think no lawyer will ever contend) he is worthy of credit when produced by the Crown to seek men's lives, but not worthy of credit when he comes into a court of justice to give evidence on their behalf: unless my learned friends, the Crown lawyers, can reconcile this contradiction, out of their own mouths I have it, that such a witness is unworthy of credit in a British court of justice.

I know what answer may be attempted to be given to this observation. They will tell you, perhaps, that this witness is confirmed by other witnesses. I beg of you to examine the testimony throughout, and see whether you can find this witness, as to the material point which you are to try, confirmed by any, ay, by even an infamous witness, much less by an unsuspected witness. You will not take all this paraphernalia of war, if I may so call it, and the head roll of witnesses you have heard as confirming him as to matters in which he ought to be confirmed. They may confirm him in insignificant points, but you will look for confirmation in the matter of the alleged treason, and if you find no confirmation as to that point, I beg you, upon the authority of the learned Solicitor-general, to dismiss him with shame from this court of justice, as a man unworthy here to be believed upon his oath. If even he were confirmed by other witnesses no better than himself, as to the plot of insurrection and rebellion, it is no support to one infamous witness to confirm him by the testimony of other witnesses almost or equally infamous with himself. Look then to the evidence carefully, and see whether you can find a confirmation of this man in any respect by an unsuspected witness: look whether you can find a confirmation even by those other witnesses who are equally or nearly as devoid of credit as himself.

The witnesses who speak to the actual transaction, I believe, are but three in number. Now, after you have done with Adams, you come to Hiden. Let us see what sort of a man Hiden is. Hiden says, he was formerly member of a shoemakers' club, that is, in plain language, of a seditious club; that he met Wilson a few days before the 23rd of February, and then what do you find upon his own testimony is the first thing that passes between him and Wilson? He has the effrontery to tell you, that the very first proposition that was made to him, without disguise and without reserve, was, "Will you be one to murder his majesty's ministers?" Good heaven! what must a man be who receives such a proposition, and does not instantly revolt at it? Is he a worse man, or a better man, than the man who goes into the park to extort money by threatening to accuse another of certain offences? Is a man who can at once assent to a plot to murder the whole of his majesty's ministers, who, to use the language of my

learned friend the Solicitor-general, can be guilty of such conduct, worthy of credit in a court of justice? The answer he would give you to that is, that he is not. Then, if he be not worthy of credit, what confirmation does he give to that infamous witness Adams? I do not know that it may be necessary to go through the whole of the evidence, but he details a long conversation between himself and Wilson all tending to this point, that they had a design in view to murder his majesty's ministers; but there is not one word of confirmation as to that matter which alone is the charge before you, and in which you are to decide. Not one word of confirmation of any of those facts and deliberations which amount to high treason. It is true, Wilson tells him (as he says) that there were some persons to go and seize the cannon at the Artillery-ground, and that they were to retreat to the Mansion-house; but all this is perfectly consistent with the case of a great riot; all this is perfectly consistent with a case that may be unconnected with the charge of high treason: it may be true to the whole extent of this statement, but it does not prove the charge of which alone you are to find the prisoner guilty. And then, at the close of this grave matter, comes what?—why this most ridiculous excuse.—"No, I cannot stop to help you;—I approve of your schemes, I wish you successful—I cannot stop to murder his majesty's ministers at present, because I have got to get a quart of cream for a family, by which I shall make a profit of a shilling!" If this statement is divested of the horror we must all feel at the recital of this abominable proposition of assassination; if it stood simply on the plot to raise rebellion, could I state the fact, and the means of its accomplishment, without at once exciting you to broad laughter? But what is the conduct of that witness when examined? According to his own account, he, without hesitation, joined in this nefarious plan; he shewed no horror or repugnance at it, but said he would be with them; and at last merely excused himself in the way I have stated.

The next witness is Monument—he states a conversation he had with Thistlewood. And the thing that presses most in his evidence is this; that Thistlewood said to him, he ought to get arms; for that all his friends had arms. You will attend to the particular circumstance of the time, when this was said—I cannot, I do not, stand here to deny, that there was a great deal of ferment at this time in the country. It was shortly after a transaction took place, or at least while it was still recent in the minds of men,—a transaction, than which no transaction that I recollect in my time, has been matter of more public discussion,*—I mean the transaction which took place at Manchester in August last, of which I will speak in no

* *Vide* 41 Hans. Parl. Deb. pp. 357, 370, 508, 887, 1180; 5 Hans. Parl. Deb. N. S. pp. 713, 719, 775.

terms indicative of my own opinion. But this I may surely say to you, that it was a transaction of which many men thought very differently from each other;—many who were in general warm friends to all the measures of government, thought that a transaction, where so many British subjects had lost their lives, by an armed force attacking an unarmed mob, was at least matter of grave inquiry and investigation; and that before any public expression of approbation was given to that measure, at least it was fit first to be inquired into.—Others again, on the other side, who thought that the measure admitted of no palliation, did not hesitate to call it in plain language a massacre. Certain laws against public meetings followed upon that, which many men who were violent in their temper shewed a disposition to resist; and it was said among those, who thought public meetings necessary to secure public liberty, we will meet, and under these circumstances we will go armed to resist the attempts of the soldiery to disperse us. This fully explains what Thistlewood's meaning might be — “I and my friends who have this view of the public transactions, are determined that we will have our meetings as usual; and as we see that these meetings are interrupted by an armed force, we will have our arms also, and will attend armed.” I do not mean to deny that this is a desperate resistance to the law; but be it so. It is not high treason. And never dismiss from your minds if you think it not high treason, you must find the prisoner — not guilty; — High treason is what alone you are to try, and not disobedience to and dissatisfaction with the laws. So that even with this part of the witness's testimony, brought in confirmation of Adams, it is no confirmation of that in which he ought to be confirmed, though it may be confirmation of a very seditious and wicked intention on the part of those people.

This witness Monument, however, I should tell you, was at the meeting in Cato-street, on the 23rd of February, where the whole plan of insurrection, if you believe Adams, was to commence; and now I pray you, does he confirm that part of Adams's evidence, which goes to shew they had a design beyond the murder of ministers? He confirms the whole plot of assassination. The transactions in Cato-street, I do admit, confirm so much of the plan as detailed by Adams; but does he confirm that most important fact, the existence of a supposed proclamation, which was to give a character to the whole meeting? Thistlewood would probably have had that proclamation with him, if it had existence, and would naturally have stated it to the conspirators. Can you believe that if that had been the case he would not have confirmed that important fact? Does he tell you that any such proclamation was produced or alluded to by Thistlewood? or that any thing more was agitated at that meeting, than a design of riot, and this

intended plan of murder or assassination? But the same observation applies to this witness, as applied to Hiden; and here let me call to my aid the observation of the learned Solicitor-general. Is a witness, who could so conduct himself, worthy of credit in a court of justice? Then here you have one infamous witness, not fully but partly confirmed by another infamous witness. Then comes a third infamous witness. Is it an aggregate of infamy that will ever make truth? What was his conduct in the witness-box to-day, when I asked what he thought of himself in joining in this nefarious scheme? — “I was very much to blame.” — Do not you consider yourself a most atrocious villain? — “In truth I was blameable;” I think such was his very expression, but it was some most trivial and insignificant phrase, expressive of no remorse of conscience, and which shewed that his former conduct had made no deep impression upon his heart, and that he continued the same unfeeling villain as when he set out upon the cold-blooded expedition of intended murder.

It may be argued (for I have heard it so argued before, and it may be so argued again), that there are witnesses who, if Adams, Hiden, and Monument speak falsely, might be called to contradict them — there is Palin — there is Cook — and there is some other man, who it is said might be called by the prisoner to contradict them. Gentlemen, is not that illusory? I have told you all along these conspirators are not innocent men devoid of all crime; and can you expect that we can call men here in behalf of the prisoner, who will voluntarily come to give evidence in his favour with halteres round their own necks. I might put it to the learned attorney-general, if one of them were to venture into this court and place himself in that witnesses box, would he suffer him to depart the court with impunity. Then, if men must come under such circumstances, can you suppose that they will come at all? Let not that argument, therefore, have any weight with you. Let not it weigh against the prisoners at the bar, that they do not call men, who if they were to come here, though they might contradict the witnesses for the Crown, as to all that part of their evidence which relates to the facts constituting treason, must confess themselves guilty of a great deal which would bring them within the grasp of criminal law. Under these circumstances, therefore, it is not to be expected that any such witnesses can be called. — If, therefore, Adams receives no confirmation from his two associates to whom I have referred; see whether he receives any confirmation from the other string of witnesses; when I say confirmation, I cannot repeat it too often, I mean confirmation as to that matter which makes the treason. Confirmation, as to other circumstances; I know there is enough.

Immediately after Adams has been examined, Eleanor Walker and Mary Rogers are called. What confirmation do they give?

They confirm the fact, that Brunt took a room—the back room in his own house, professedly for Ings, but really for certain meetings. I cannot deny that they had that room nor that they had consultations there, perhaps for nefarious purposes; but the question is, did their consultations there refer to high treason? And you will always bear in view, as far as the confirmation of those witnesses goes, it amounts to nothing at all as connected with the matters and facts which are necessary to constitute the crime of high treason.

After these, Hale is examined; he confirms nothing further than that they held meetings in that room; but I think there is a piece of his testimony important to the prisoner: He found the fragments of the cartridge-paper, unwritten upon; that cartridge-paper, which was sent for, I say, for the purpose of wrapping up cartridges, but which Adams chooses to say was sent for for the purpose of writing the proclamations. Then they call Smart, Bissix, and Gillan, three unsuspected witnesses I admit, but what do they prove?—that they saw a man watching in Grosvenor-square, opposite lord Harrowby's house: that is confirmatory of the charge of assassination, which I do not in the present inquiry dispute; but as far as respects high treason, it carries the evidence not one tittle further.

I shall pass over, or leave to my learned friend, all that passed at Cato-street; because here I am bound to admit to you, that the transactions which took place there are so incontestably proved, that I should deserve very little credit at your hands if I were to attempt to deny any part of them. But still it comes back to the same question again: you have to ask yourselves this question, was any thing done there indicative of the ulterior plan of treason? Much may be found there which confirms the nefarious plan of assassination of his majesty's ministers, but nothing is found there which confirms the ulterior plan alleged against this man of levying war against his majesty. And you are to be convinced that these parties were conspiring not only to kill his majesty's ministers, but to levy war against his majesty; and if on a view of the whole case you shall be of opinion they did not conspire to levy war against his majesty, although you may be satisfied they intended to kill his ministers, it is no proof to support this indictment charging treason.

Then comes the question, what is a levying of war? because, if when they had carried their plan unto execution it did not amount to a levying of war; of course the conspiracy to carry that plan into execution could not be a conspiracy to levy war. Now, levying war is entirely a question of fact. I know no technicalities which are to guide you; it is a question you are to put to your own good understandings, and say, what is war? War, in its common acceptation, we know consists in two states arrayed against each other, with forces

organized and disciplined, commanded by officers, and supplied with all the material of war. Civil war is but the same thing, then one part of a state is arrayed against another part of the same state,—and, therefore you are to consider whether if this plan had been carried into execution, you see enough to say there would have been a levying of war. When I say it is a question of fact, I state to you the opinion of the same great and learned judge, whom I before quoted—lord Hale. He states, “what shall be said to be a levying of war,” and that is the question for you here, “it is partly a question of fact. For it is not every unlawful or riotous assembly of many persons to do an unlawful act, though *de facto* they commit the act they intend, that makes a levying of war, for then every riot would be treason.” So here, if you think they had laid a deep plan of wicked and extensive plunder, or of riot, or of murder, if it be not a levying of war, it is not high treason. But to continue the words of the learned judge, he says, “it must be such an assembly as carries with it *speciem belli*, that is, the appearance of war.” Now, let me pause here, and ask you in the language of this learned judge, did all that was proposed by this assembly carry with it “the appearance of war.” Forty men! Can you say an assemblage of forty men, for whatever purpose assembled, carries with it the appearance of war? He goes on—“as if they ride or march, *verillis explicatis*,” that is “with unfurled banners;” forty men marching with unfurled banners to take possession of two cannon, to take the mansion-house, and overthrow a mighty empire, is that a levying a war? “Or if they be formed into companies.” Are they formed into companies here? I have heard of no companies, nor of any commanders.—“Or if they are so circumstanced that it may be reasonably concluded they are in a posture of war, which circumstances are so various that it is hard to define them all particularly.”—So says the learned judge, and from what I read to you before written by the same great man, when it is hard to define them particularly, or they cannot be defined, then the jury are to judge of those circumstances, whether they amount to a levying of war or not. And if the learned Attorney-general can shew you no case precisely like this, it is safer not to let in constructive treasons, but to exercise your just power, and to acquit the parties of any such accusation.

If my learned friend the Attorney-general can furnish you with no parallel case, I think your own recollections will furnish you with something like one. I dare say you all remember three years ago, there was an indictment for high treason something like the present. If I remember the circumstances of that case aright, all the same atrocities were there given in evidence, by a witness much like Adams, and who was disbelieved, as Adams, I trust, will be to-day. That witness stated circumstances equally atrocious with the:

present; for though the murder was not then directed against his majesty's ministers, it was stated that the soldiers were to be murdered in their barracks; that the town was to be fired; nay, more, it was in evidence there that great parties did actually assemble, and you recollect that a gun-smith's shop was plundered of arms, and other arms were found upon rioters; they marched also with flags and banners, and yet with all these circumstances in proof, the jury then (judging justly, as I trust you will judge to-day) did not say that the parties were free of all guilt; no! they could not say that; for if they had been indicted for a great and enormous riot, no doubt they must have been convicted; but they said upon the testimony of that day, that which I trust you will say upon the testimony of this day, that whatever that case was, it was not a levying of war, and therefore not the high treason imputed.

With these observations I will dismiss this part of the case; only let me once more (perhaps I may be tedious; but a man would be rather tedious than fail in his duty) call your minds to this point:—It is not a question of guilt or innocence of the prisoner. It is a question of treason, and no other question you have now to try. There are other indictments now pending for the other offences. The question of treason, and that alone, is the one you have to judge of on the present indictment.

I do not apprehend the other parts of the charge will be much relied upon. But I will just say a word as to them. It is charged in two of the counts of this indictment, that there was a compassing and imagining the death of the king; and also that there was a design to depose him from his royal style and dignity. As far as you have any evidence before you (even putting out of your consideration the contamination of the material witnesses), there is no evidence whatever of any hostile intention against the person of the king. And it is to-day, for the first time, that I am to hear (though I dare say it is a very convenient doctrine to the ministers) that they consider themselves so unalienably united to his majesty, that all conspiracy against them and their places must be considered as a conspiracy against majesty itself. To deprive them of their places certainly is not high treason, because there always has been, and ever will be, parties who think the present administration,—when I say the present administration, I mean the existing administration of the day,—may be fairly opposed and removed, and that another administration can be formed, who will manage the affairs of the country much better. This is the uniform language held by some persons in a certain great assembly in this country. There is a constant endeavour to persuade the country to that effect; and, therefore, the depriving his majesty's ministers of their places is no treason. Has conspiring to deprive his majesty of one or two of them by force, ever been held to be high treason? Certainly not. And I do recollect to have read in some por-

tion of our history (whether this reign or the last, I will not undertake to say) that certain privy councillors themselves have gone into the fields and pointed their pistols to each other, each intending, no doubt, to deprive a minister of his place and his majesty of a counsellor. Now, those gentlemen would have thought themselves very strangely treated, if an indictment for high treason had been preferred against them, though if the event of their battle had been different, they might have been treated with an indictment of another description. Then, to go one step farther, is depriving his majesty of all his ministers at once by force, high treason? I say it is not. And though I feel all the horror which must be excited in the breast of an Englishman at a plan of this sort, I cannot sacrifice my duty to my feelings, and refrain from warning you not to pervert the laws from their just ends—not even to punish guilt. For the protection of the lives and liberties of us all, which are only safe while the law is inflexibly administered, you will, I am sure, attend to the matter alone in the charge before you, and consider whether or not the prisoner has been guilty of high treason, and high treason alone.

It is a great consolation to me that I am to be followed by my learned friend, who with far more eloquence and ability than I possess, will point out the discrepancies in this evidence. I have been anxious to do my duty to the prisoner—not forgetting that duty which I hold every lawyer owes to his country. I have told you the danger, and have read from the highest legal authority the fatal consequences of letting in a flood of constructive treasons, which, thank God, it is in your power to prevent. And be assured of this, that whatever you may feel as to the particular circumstances of this case, you are best serving your country when you confine yourselves strictly to the consideration of the offence charged by the indictment before you. You will, therefore, take all the circumstances of this case into your consideration; you will say whether you can find upon the whole testimony, including the contaminated testimony of Hiden and Monument, those facts proved, from which you can infer, that there was a plan of levying war against his majesty, in order to force him to change his measures: weigh all the circumstances, if you do find them fully proved, I cannot expect you will find any other than a verdict of—guilty: if you do not find them fully proved, I am sure you will not hesitate to pronounce a verdict of—not guilty. Consider it well. I can say no more. May that Being in whose hands are the issues of life and death, direct your minds to a right conclusion.

EVIDENCE FOR THE PRISONER.

Thomas Chambers sworn.—Examined by
Mr. *Adolphus*.

Where do you live?—No. 3, Heathcock-court, in the Strand.

That is nearly opposite the Adelphi, I believe?—Yes, it is.

Do you know a man of the name of Adams?—Yes, I have seen him, he came to my place.

In whose company did you see him?—Edwards's.

About what time did you see him?—About a week before the Cato-street business took place.

Where did you see him?—In my room.

Who were there?—Myself and Edwards.

And Adams?—Yes.

Tell us what passed then?—

Mr. Gurney.—If my learned friend is proposing to give any contradiction to Adams, he should put a distinct question.

Mr. Adolphus.—With all my heart, I should rather do it so. Did Adams and Edwards come in company or separately?—They came together.

Did they make any proposal to you about the assassination of his majesty's ministers?—Yes.

Did Adams say to you that they would do it, and that they would have blood and wine or their supper?—Yes; Edwards asked me to go with them, and I would not go.

Then what did Adams say?—I refused; but I ought to state before that, after I learnt—

No; you ought not to state that. Did Adams say to you that they were going to kill his majesty's ministers, and that they would have blood and wine for supper?—Yes.

Did Adams and Edwards, at any time, come to you again at your lodgings?—On the Monday night in the week that the Cato-street business took place, it was a very wet night.

Did you see them again at your lodgings on that night?—Yes.

Was that the same night or another night?—The Monday night.

On the night of this affair, in Cato-street, did the two come to you again?—No.

Who came then?—No one, not that day.

When then?—On the Monday before the Wednesday.

Did they bring any thing with them?—Yes.

What?—A large bag.

Mr. Gurney.—Speaking from recollection I would appeal to your lordship's notes, whether there was such a question put to Adams.

Mr. Adolphus.—I was not able to take a note of my cross-examination, and therefore I cannot speak to it: I will not press it then.

Did you see them again?—Yes, with a large bag which they wanted to leave.

Thomas Chambers cross-examined by
Mr. Gurney.

What are you?—A boot maker.

How long have you known the prisoner Ings?—Where is the prisoner Ings?

Turn to the bar and look?—I might have seen him, but not to have any knowledge of him.

I know that; that is not an answer to my question?—How long have I known him? I cannot say.

About how long?—I cannot say.

You really cannot say how long?—No; I do not suppose I have been in his company above twice, or three times.

At what places?—The first place I ever saw him to speak to him was near the court where I live, at a pamphlet shop.

Is that the shop where they sell Black Dwarfs and Medusas?—Yes.

Kept by whom?—Let me see; I do not know; Watling, I believe.

You are quite right. Give me one of the other places at which you have seen him?—I cannot state where I have seen him.

Oh yes, you can?—I am sure I cannot in truth charge my memory with it.

I must trouble that memory of yours, because when you have seen a man three times you must know where. Shall I help your memory?—I cannot state where it was.

Do you know a house called the Scotch-arms?—Yes.

Where is that?—In Round-court in the Strand.

That is not far from your lodgings you know?—It is not.

Did not you see him there?—No.

Will you swear that?—Yes.

Positively?—Yes.

You have been there?—Yes.

When?—Three times.

When were those times?—Before Christmas.

Who was in the chair the first night?—There was no chair where I was, nor any business going on.

Mr. Adolphus.—I submit that to ask who was in the chair, when these prisoners are not proved to be there, is not evidence.

Mr. Gurney.—My learned friend is anticipating what probably may come out.

Lord Chief Justice Dallas.—I cannot anticipate what may come out in the evidence.

Mr. Gurney.—I am not pursuing it wildly I assure your lordship. Who was in the chair?—There was no person sitting in a chair.

But there might be a chairman without that?—But I can say there was not.

How many were there?—I cannot tell, I was in the tap-room.

No other room but the tap-room?—No.

The other nights you were there, were you in no other room but the tap-room?—Three times is all the times I was there, and always in the tap-room.

Do you know the Black Dog in Gray's-inn-lane?—I have been at a public house, which I have since heard was the Black Dog, once.

Who was in the chair then?—There was no chair then, it was in a little parlour.

What was the size of the company?—It might be about seven when I was there.

When was it?—On a Sunday night.

In what month?—I cannot state.

Before or after Christmas?—I cannot positively say.

I dare say you could give me the names of those seven, all of them?—I am sure I could not.

Give me the names of those you do remember?—I was invited there by a man of the name of Bryant.

When you went there whom did you find?—I cannot exactly say.

Just give me some of them?—I was invited to take a pint of beer with him, he was going to the Cape of Good Hope.

Who were there invited to take leave of your friend Bryant?—They were all strangers to me except one.

Who was that one?—That was Mr. Thistlewood.

Do you know Brunt?—Very well.

Will you swear Brunt was not there?—Yes.

You will?—I will; not when I was in the room he was not.

Do you know Palin?—No, I do not think I do know Palin, I never had any conversation with him to my knowledge.

That might be; but will you swear you do not know him?—No, I will not do that; for I may have seen him in a public-house.

Did you attend the meeting at Smithfield in December last?—You mean the last meeting that was held there.

You might go to the first as well as the last?—I was at all of them.

Who carried the black flag?—That I cannot state.

What flag did you carry?—I carried no flag the last meeting.

Any meeting? the last but one, perhaps?—Let me see; I have carried two flags.

Did you carry the black flag either of the times?—No, I did not.

What flag did you carry?—It had inscribed upon it "The Manchester Massacre."

Did you carry the flag with the inscription "Let us die like Freemen, and not be sold like slaves?"—I never saw such a flag as that.

At either of the Smithfield meetings you never saw such a flag?—Not to my knowledge.

Did you carry a flag on the triumphal entry of Mr. Hunt into London?—"The Massacre of Manchester?" no; the "Trial by Jury," that was the flag I carried.

You have told me you know Brunt very well, and that you know Thistlewood; do you know Davidson?—Yes.

And Tidd?—No; I have not much knowledge of Tidd; I may know him by seeing him in our stock meetings, in conducting our trade affairs.

Do you know Wilson?—Yes, I have seen Wilson.

How often have you seen him?—I cannot exactly say.

Do you know Harrison?—Very well.

And Bradburn? No; Bradburn I have not much knowledge of.

Strange?—No; I do not know Strange at all.

Gilchrist?—No, I do not.

Or Cooper?—Nor Cooper.

These you do not know?—No.

How long have you known Mr. Thistlewood?—Ever since Mr. Hunt's triumphal entry.

You, I dare say, were excessively shocked at this proposition, made by Adams and Edwards, to you, to go and assist in assassinating his majesty's ministers?—It shocked me so I would not go to do any such thing.

And as Bow-street is a very little distance from you, I dare say that induced you to go and lay information?—No.

Thomas Chambers re-examined by
Mr. Adolphus.

Did Edwards or Adams know of your acquaintance with those other persons when they came to your house?—I cannot say how Edwards came to know of it.

But, however, they came?—Yes, they did.

Mary Baker sworn.—Examined by
Mr. Curwood.

Are you Mr. Richard Tidd's daughter?—Yes, I am.

There were certain things found at his house by the police officers?—Yes.

Some powder?—Yes.

And grenades, as they are called?—Yes.

And some balls?—Yes.

Who brought them there?—They were brought in in the morning that they were seized.

Who brought them?—A man and a boy.

Do you know a man of the name of Edwards?—Yes; he brought some of the hand-grenades.

Did he bring them there the morning they were seized?—No.

But before?—Yes.

When were they taken away after they were first brought?—They were taken and returned.

Did you see Edwards on the morning of the 23rd?—Yes.

What did he do then?—He came and took some of the grenades and powder away.

Were any of them brought back again?—No, not by him.

By any body?—I dare say they might be the same that were brought back on the 24th, but I do not know.

Was there one very large one, do you recollect?—Yes.

Who brought that first?—Adams.

Was that brought back again?—No.

Mary Baker cross-examined by
Mr. Solicitor General.

The box, I believe, was not taken away?—It was taken by the officers.

How long might the box have been there?—It might have been there two or three days.

How long had the grenades been there that were taken away on the Wednesday?—I do

not know, they might have been there a fortnight, I cannot say as to the precise time.

What time of the day, on the Wednesday, was it they were taken away?—In the morning part.

Mary Baker re-examined by *Mr. Curwood*.

Was the box fastened or corded?—Corded.

Had it been opened at all to your knowledge?—Not to my knowledge.

Mr. Curwood.—We shall not trouble your lordship with any more witnesses.

Mr. Adolphus.—Gentlemen of the Jury:—The course of this cause has now reached that period when it becomes my duty to address to you such observations as appear to me likely to be favourable to the prisoner, who stands before you for his life or death; and if there wanted no other motive to induce you to give a serious attention and a kind indulgence where it shall be necessary to the arguments I have to submit to you, this consideration would be sufficient, that probably the few feeble sentences I shall utter, will, if your opinion should not coincide in that which I have to say, be the last favourable words concerning that unhappy man, which he will ever hear in this world. When I say favourable words, I do not mean that the learned judge, who is to sum up the evidence to you, will not make every suggestion in his favour that the law and the facts enable him to make, but that you will not hear from any person after myself, an address purely in favour of his cause, you will hear, recommended with all the weight of authority, and all the force of talent, a strong set of observations against him, against all that has been advanced by my learned friend, and against all that I shall advance; but in his favour you will hear nothing but those deductions which the evidence draws forth from the learned judge, and which, I hope, to whatever extent they may go, will also find with you a most favourable acceptance.

Having so very lately performed for another person the duty which I am now called upon to perform, I feel most sensibly that languor of mind, and that sensation approaching, if I may be allowed the expression here, to distaste, which ever attends those who have to tread twice over the same ground—those who have to advance, for a second time, the arguments and the topics they have advanced once before. I can have no means of varying my statements, except by abridging them; I can have no means of adding to their force, unless I were to call in aid—that which I have not—a renovated mind and extended abilities, such as within the short period which has passed between Wednesday and this day, of course cannot be expected. But I advance to the performance of this difficult task with a mind the more clear, and with faculties the more unfettered, because I am enabled to lay my hand upon my heart, and to say that no one

opinion which I have had the honour to submit to the former jury, has since been impaired in my mind; but, on the contrary, that the transactions upon the present trial, and the variances from the evidence which I heard before, very much confirm and advance those opinions which I formerly held, and make me flatter myself that I shall not, without producing the effect of conviction, address to you some of my arguments and observations.

You have been told, in the fervid and eloquent opening of this case, by the learned Solicitor-general—and you have heard it since from my lord, in a way that I hope I shall not cause it to be mentioned again—that the verdict which has passed, ought to be as much out of your minds, as if it had never occurred. I agree perfectly in that; I recommend it; and I pray it may be so, but at the same time I know how difficult it is—nay, how almost impossible it is—for any men, however correct their minds may be, not to let their judgments be in some degree influenced by their memories, not to permit their minds to be swayed by some consideration of that which twelve virtuous, discreet and honest men have done before them. I am therefore, to pray you to exercise on behalf of this unhappy man, with its utmost rigour, that difficult duty of abstraction and self-denial—to forget every thing, except what you have heard in the course of yesterday and to-day, as much as if you were totally unconscious of its having passed; as if this man were brought to a separate trial, and had no connexion with any other person who has undergone, or is to undergo the judgment of a court and jury.

When I speak of my own weariness—of my own labouring under something approaching to distaste in entering on the trial of this prisoner, I cannot help contrasting myself with the learned Solicitor-general, and his evidently joyous and happy situation—he is going a journey, as he expresses it himself, with an assumed confidence, that he cannot fail of arriving ultimately at the point of success—he put it to you that he did not state what he expected to prove, but what he knew he should be able to prove; he did not put it that he had any doubt or difficulty about making out his case, but that experience had taught him, and he knew what he should be able to make out, because the witnesses had undergone examination before, and he could calculate what their disclosures would be. To me there can be no such advantage; to me the very little advantage I shall have, will be to shew you hereafter, by the comparison of Adams's testimony, as he varied it himself from one day to the other, that if I could be prepared to answer the facts then disclosed, new facts were in reserve, and I should have a new case from the same witness, he having known of things which he thought fit not then to state to the jury.

It is very usual with us, when we fear that the talent we have to bring to the subject may

be overbalanced, either by the popularity of the cause, or the ability of the advocate you have already heard, to pray you will dismiss from your minds certain topics which have been introduced. In the course of the speech of the Solicitor-general, there was a great deal of fervid declamation applicable to the horrors which might have been produced by these speculative enterprises—I must beg you to avert your minds from those descriptions, to think only of that which is actually proved to have been meditated and done, to carry yourselves no further than the witnesses carry you, and to examine the testimony of those witnesses with that strictness, from which alone the result of justice can be obtained.

The learned Solicitor-general seeing rightly (I cannot call it foreseeing, for it was rather taking a retrospective view) seeing exactly what the course of his evidence would be, and what the course of the examination of his witnesses would turn out, proposed to prove his case by two means; the one by an accomplice, and the other by witnesses who should support that accomplice; and which witnesses he said to you (and particularly applied the observation to one of the name of Hiden) should be unimpeached and unimpeachable. The learned Solicitor-general then proceeded to state the law with respect to the examination of accomplices; certainly, it would be impossible to lay down positions of law with more eloquence than he did upon that occasion; but I cannot help thinking, with the deference due to his high station, and that character he has maintained through life, that a little accuracy might be added to his propositions, by talents much inferior to his own. In considering the evidence of an accomplice, this is most true, that you must consider him as a witness, whom necessity puts into the hands of a prosecutor, and for whose antecedent delinquency, they who bring him into court are in no way answerable; so far he can be used by a prosecutor, without throwing any stain on a prosecution, or those who conduct it. They do not willingly contaminate themselves with a bad man, but they do that which the Solicitor-general intimated to you they alone can do, they pursue the course of the conspiracy, by having recourse to the eye-sight and knowledge of those who have been in the dark recesses of those conspiracies, and can alone state what happened there. Thus far I agree most implicitly with the Solicitor-general; but when juries and a court have accomplices before them, there is a great deal more to be done than the learned Solicitor-general pointed out to you, which, indeed, amounted to no more than that you were to look at him with the same eyes as you would at the most respectable witness; for he says, first, you are to examine the interest he has in the evidence he gives; so you are if the most respectable man I see in court were to come to give evidence; if there is any interest or even any feeling arising out of partiality or affection, you will take that into your considera-

tion, in forming your estimate of the evidence, whoever may be the witness: in that, therefore, an accomplice would not stand in a different situation from the most honourable of mankind; but he does stand in a different situation, and it is over this that the talent of the Solicitor-general has been employed to throw a cloak; he asks, has Adams any interest to add to the deepness with which the crime is already invested? Has he an interest to represent matters worse than they really were? has he an interest to carry any point in the cause? Yes, gentlemen; yes is the answer to every one of those propositions; he has the strongest interest; he has procured a conditional indemnity, as we are to suppose from the concession of the Solicitor-general, by proposing to come forward as a witness; but he comes in chains and in custody, he comes, not as a free man, speaking spontaneously the dictates of his own mind, and standing upon his honour and conscience; but he speaks as a man who must carry certain points, to earn that which has been promised him, and without which he has no reason to think he shall obtain either indemnity or advantage; they are to depend upon the success which attends his evidence. In this I do not rely on assertions which may be made; I shall refer myself to your own good sense, to the experience you must have of the nature and operations of the human mind, whether you can give the same belief to a man who comes into court in chains and in custody, which you would to a man who comes free from fear, and exempt from bias, especially when he comes in the chains and custody of those who can prosecute him at the same moment for the offence which he comes to prove against others. I do not say that he is incapable of being received as a witness, but that he must be received with much more care and caution than would be necessary with a witness of any other description.

We are asked again, does this witness expose himself to contradiction, and is he contradicted? the same question, too, applies to every other witness, in every other case;—every witness must take that which an accomplice must take, the chance of being contradicted, if his evidence is capable of contradiction. But the accomplice, whatever may be said about him in other respects, has this advantage over an honest witness, unless a proper deduction is made from his testimony by the jury,—that, in a matter of conspiracy, particularly all those, or nearly all those, who could contradict him, are tied up and prevented from doing so by being included in the indictment; and whether they be convicted or not, they cannot be witnesses to contradict him. If this prisoner, for example, were acquitted, undoubtedly he could be a witness for others; but until he is acquitted, the law does not give a man that advantage which he would have, if the individuals who might give evidence for him were charged in a separate indictment; and being supposed innocent until pronounced.

guilty, might be received as witnesses before their trial. Thus, therefore, those most capable of contradicting the accomplice, are tied up and prevented giving their evidence; but when we are asked, are the witnesses contradicted that have been brought forward, I cannot help thinking it something more of a taunting question than I should have expected. If there are men who are not named in the indictment, and who may be cognizant of some of the transactions on which it is founded, can it be supposed, when a witness for the Crown is brought into court under a guard, and in custody, that he who should come against the Crown, would fail to expect that his day would come; that ere long he would appear in court in a very different character from that of witness?—Can it be supposed, for example, that Palin, who has been named by the learned counsel for the Crown, can come here as a witness? It must be known he is beyond the reach of any subpoena; but even if he could be found, could it be expected that he would come forward? What then avails us the offer that we may produce him, when he who makes the offer must know that which the witness Taunton tells you upon his oath, that from the moment of this affair taking place, Palin had been a fugitive, and a large reward offered for apprehending him. Truly, the offer is most gracious to us: you may call Palin, when Palin could not come, if we could find him, without the certainty of going to prison; but Palin cannot be found, because all the vigilance of the police officers, stimulated by a large reward, does not enable them to discover him; such an offer, therefore, does seem rather an essay upon our weakness, than a suggestion of the means of extricating ourselves from peril.

When the statute passed, which directs that a list of the witnesses shall be given to the prisoner, it certainly was with the benevolent view, that by knowing who should appear against them, they might know what sort of evidence to prepare, in order to repel the testimony of those witnesses. The prisoners here have a list of, I think, one hundred and sixty-eight individuals; nothing to guide their judgment, no knowledge but such as their own feeble and unwarranted expectations enabled them to form of who would be likely to be called against them, and whom they should be able to contradict; they give their instructions accordingly, and when they are prepared with instructions to contradict a witness whom they expect to be produced, because he has been mentioned throughout the transaction, he is not brought forward. When another witness is called, and some evidence has been offered to prove him unworthy of belief, when we have other witnesses on the floor to prove him a man to whom no credit ought to be given, we find him withdrawn, and that expense has beggared still more an exhausted purse, and those witnesses who have come to particular facts—

Mr. Attorney General.—Really, my lord, I must interpose.

Mr. Adolphus.—I was within two words of finishing my sentence.

Mr. Attorney General.—If it is done it is not worth while to object.

Mr. Adolphus.—I should be sorry to say any thing irregular. If I am wrong I shall submit to correction from my lord. I trust I was making no observation that was not perfectly warranted by the opening. It was put to you, gentlemen, that you might believe the witnesses to be produced for the Crown, unless the prisoner contradicted them by witnesses. I was shewing you how difficult it was for the prisoners to produce that evidence, and I was shewing you more particularly that the list of 168, which by formality of law has been delivered to them, presented no certain indication who would be called; and that even if that circumstance could have guided their judgment, or influenced their intention, that some how or other, by the subtraction of some evidence, that judgment was exercised in vain. Now, though you have heard a much more able argument on the other side than I shall be able to make, I should think in common fairness, and common candour, I have a right to answer the arguments of the Solicitor-general, and to say that you are not without witnesses because we are not able to produce them, but because when we have gone to the labour and care of obtaining them, the expense is thrown away, for the witnesses announced to us are not brought forward by the Crown; and whatever reasons we may have had for believing they will be called, to our great disappointment they are not so.

It is said there are other witnesses, Cook and Harris, who have been present at some of those conversations, and may be called. I deny that there are any such witnesses; the witness, Adams, has told you that which is untrue; there are no such persons whom we could adduce; there are such persons in the other room, whom the Crown could call, and then we should see whether they would swear to that which the informing witness has advanced; but if I had produced to you a witness of the name of Harris or Cook, we might have been told “very true, that Harris or that Cook says he never was at such a meeting; but he is not the man alluded to.” We, on the side of the prisoner, do not know where to find him, and we should be treated with a sort of indifference as to the effort we had made (for I will not use any other expression), and be told we had proved nothing. “Last of all,” says the Solicitor-general—“You are to observe whether the accomplice witness is or is not confirmed:” not last of all, gentlemen, but first of all. I say it is a primary proposition in the administration of law, that an accomplice cannot be believed unless he is adequately confirmed; that he is, as the Solicitor-general

says, a competent and a credible witness; nay, I can produce the dicta of judges, that he is capable of being heard, although there is no confirmation of his testimony, but shall ever treasure in my mind the succeeding words of the same learned judge: "When I have granted all this," he said, "I have conceded merely a barren truism, for it has always been the practice, and I believe always will be the practice of judges to tell juries that they cannot believe an accomplice unless he be confirmed, or, at all events, not to make up their minds to a verdict on such evidence unconfirmed"—not confirmed, I admit, in every proposition, but so confirmed in some particular essential to the issue, as to make it safe for a jury to believe the whole of his evidence.

There are other points to which I will call your attention, which will shew what credit ought to be given to an accomplice, and whether he ought to be believed or not; and I consider this of the more importance because, in defiance of all I have heard or may hear from any quarter, I do and must maintain, that the treasonable intention upon which alone you can find the prisoner at the bar guilty of high treason, lies in the mouth of the accomplice alone, and if he is unfit to be believed, and you erase, as you then must do, his testimony entirely from your memory and judgment, there is not a shadow of proof against the prisoner to convict him of high treason. When I speak of the confirmation of a witness, I do not speak of those unimportant confirmations which in some parts the accomplice has received; I do not speak of games of domino, of lighting of candles, of flannel bags, and ball-cartridges, which may have been intended for one purpose or another, but of some direct application of that intention, which at present lies only in the mouth of a witness whom I shall maintain to be, on his own showing, utterly incapable of being supported, except by complete confirmation.

The points to which your attention ought to be directed are these:—Is the account which Adams has given, probable or even possible? Is the conduct of the witness such as to entitle him to belief? Or does he throw doubt and suspicion upon himself? Is he contradicted by all the witnesses produced on the one side; and is he confirmed as far as he might be; or are witnesses withheld for fear that that which is intended for confirmation should turn out to be contradiction? Those are the points to which I think you ought to direct your attention. When I say you ought, I say it with submission to your own better judgments and the directions you may receive from above; but I say on every one of these points the evidence of Adams will be found lighter than the air or the vapour which floats upon it.

As to the probability of his story, it is almost conceded by the other side that it is utterly void of probability; they do not affect to say, this is a narrative we should have believed by itself, although we do not admit that the ground

on which it is impeached, namely, its improbability, applies to that more than to other conspiracies which have existed within our own observation. I deny that, gentlemen; that improbable plots may have arisen within our own observation, or been stated in history, I admit; but I assert, that no one so improbable as the present ever existed in truth or fiction; when I say never, I do not pretend to have read every thing; but, in all my reading, I am not aware that any one so improbable ever existed either in Great Britain or elsewhere. I am not rash enough to say, and never will say, that because a plot is improbable, you are, therefore, to disbelieve its existence; but that if a witness comes forward, of a most suspicious and odious description, and gives you an account of a transaction void of all human probability, it is not his positive swearing that such a plot existed, that will induce you to believe it did exist; but on the contrary, you have to weigh this; have a dozen men, or any certain number of men, not being under the care of a keeper of madmen, or wearing a strait waistcoat, concurred in a plan which no human being can believe? Or is it the malignant fiction of one, who knowing already to what degree they were tainted by an intended murder, and how far they were endangered under lord Ellenborough's act, for shooting at the officers, threw in such additional circumstances as might include them all under a charge of high treason? The witness himself is arrested upon a charge of this kind—he is obliged to swear to that which will recommend him—he is obliged to swear deeply—he is obliged, in swearing, to assume the semblance of a Christian—he is obliged to aim at consistency, because he dares not move one tittle out of the line, for the consequences to him would be fatal; he comes before you in the midst of these urgent interests and pressing necessities: And can you think, that from such a mouth such a plot receives the sanction of probability?

My learned friend Mr. Curwood, anticipated that I should go minutely into the evidence, to shew its discrepancies, and the impossibility of its being true. I did so once, but I confess I am neither prepared nor desirous to go through it again, because I think that the leading points may be easily selected and arranged, and that the absurdities will be so glaring, that when once shewn, you will have a full notion of the extent to which you must carry your credulity before you determine in favour of the testimony of a witness like Adams.

It seems that at some time in January, an interview took place between Thistlewood, Brunt, and the witness Adams, at which something was proposed about the assassination of the cabinet ministers; that he became acquainted with Thistlewood, on the 13th of January, and that at some time between that and his going to prison on the 16th, this extraordinary conversation took place. I have a note of his examination on the former occa-

sion, and I directed his attention to that, and adverted to some circumstances to which I shall not now advert, but shall notice in my further address to you; but that this plot was arranged in some degree, and was communicated to this man, who was then going to prison for so small a sum as six and twenty shillings; and who was shut up for that sum for fifteen days. Consider who this man is—a born subject of our lord the king—a soldier who has received his pay—a man who is bound at his time of life (for, as I should think, from his looks he must be nearly fifty), to have due and right views of the obligations of society—he keeps his secret in his own breast, determined neither to act upon it nor to disclose it, and restrained by what? by fear, says the soldier! fear acted upon me, even as early as the 15th of January, or the day before I went to White-cross-street, when I was within four walls.—Why did you not go and tell the Secretary of State or my Lord Mayor (for it was in London) of this plot, and claim the protection, of the prison-walls, till those persons were secured? He tells you that he felt fear, and yet he did not take the means of safety—a glorious specimen of the consistency you are to expect; but this man fears, and therefore hates; for no man fears that he does not hate; but these persons so feared and yet so hated, are the very first persons to whom he addresses himself on getting out. He is discharged on the 30th, and on the 31st of January he is with them again; on the 2nd of February again, and their plan is then disclosed—a committee is formed—the chair taken—resolutions are passed as matters of business, and all this in the presence of a man of the name of Edwards, but he never mentions one tittle to any one on the face of the earth.

Gentlemen, do you believe in the fear? do you believe in the motive? Is he not, in fact, the suborned witness of another man, to state something which never did occur, to bring these men whose lives may be forfeited, or are endangered for crimes of another description, within that of high treason, because that is a more acceptable mode of sacrifice, and may do for him that which another accusation would not have done? because as to every thing which relates to the intention of massacre at lord Harrowby's house, as to every thing which relates to the death of Smithers, or any other part of the subject you are now trying, there was evidence enough without this accomplice, and therefore, the election must have been made somewhere rather to convict these people of high treason, and to make them a sacrifice for that, than to convict them of crimes of which they could have been proved guilty, by the most unexceptionable witnesses, if they really are guilty; and so to rid the country of any danger from them, and prevent others from entering into such combinations in future.

Going through the whole of the evidence given on this part of the case, I premise that that is a perpetually glaring absurdity which

nothing but the most abominable audacity could ever have detailed. I beg you to attend to the statement of the steps that were taken, of the propositions made, of the feeble force with which it was intended to execute the most extensive plot ever known in this country, and all this not taken up rashly, or on the spur of any occasion, but debated and methodised, discussed and argued for the space of five weeks, no one having the wisdom to discover that this project was like the baseless fabric of a vision. Even supposing they are all staunch and firm, even supposing—that which he gives you reason to understand they could not possibly suppose—that they had no spies or traitors among them, even if it were left to its own natural imbecility, the acts of plunder and murder, the conflagration of houses, and seizure of property might have taken place, but ignorance and stupidity are not so great as to induce men to believe that any thing further could be effected.

You have had that which produces always a sort of mechanical effect. I do not mean to pay an ill compliment to your understandings, but you have had a display of visible objects,—pikes and swords, and guns and blunderbusses have been put before you, to the end that this feeling may be excited in every man's mind, "how should I like to have this sort of thing put to my breast? how should I feel if this were applied to my chimney, and that to my stair-case," and so on: that is, that the individual feeling of each man may make him separate himself from society, may make him, through the medium of his own personal hatred of violence or apprehension of danger, think that this contemptible exhibition of imperfect armoury could operate on a town filled by a million of loyal inhabitants, or could give the means of overwhelming the empire. When touched by reason, they shrink to nothing, and will never produce a verdict contrary to the evidence of facts: it is like displaying the bloody robe of a man who has been stabbed or murdered; it is like the trick practised at every sessions, where we see a witness pull out some cloak or handkerchief dipped in blood of the person, to produce conviction through the medium of commiseration; they do not trust to description, but rely upon display. That is the effect of the production of these arms; but to suppose that, with such a collection however furnished, with such a combination of miserable means, four or five and twenty men (for that appears to be the number concerned; fifteen or sixteen the largest number that ever met to resolve) could conceive they could accomplish these mighty designs, does exceed all belief, unless supported by much better evidence.

But we are told that it is not because a plot is rash, or ill-conceived, that therefore the belief of it is to be rejected. I agree to that, provided it be competently proved. It is said, all plots, in all histories, have been rash and ill-advised; in that I do not agree: the

strength of combination, the force of influence, or the weight and application of physical power has characterized every one I have read of; and where rashness has been displayed, it has been from a mere miscalculation, and not where the parties have, perceiving the hopelessness of their attempts, yet persevered in them. I have turned my mind to the case of the earl of Essex, in the reign of queen Elizabeth, and I agree that that was a most rash and ill-concerted plot; but that illustrious nobleman had formed a plot in which he was countenanced by, and connected with, some of the first persons in the realm. The rashness of his enterprise consisted in the idea, on his part, that the great popularity of his enterprise would engage in his behalf the countenance of all the citizens of London. He went out with two hundred followers, and when he found himself coldly received, returned to his own palace, and there defended himself: he betrayed himself by his own rashness; he shewed, it is true, a want of knowledge of the minds of the people among whom he was to move, and a want of sufficient insight into the resources and wisdom of the government of queen Elizabeth, which he attempted to overthrow; but his was a very different case from a combination which has no support from influence, or from money; from powerful names, or overwhelming numbers.

Gentlemen, something may be said about a parallel to be found to this plot, in the plot of colonel Despard. Colonel Despard himself a soldier, understanding the art of leading soldiers, is said to have engaged in a plot fully as absurd as this. I shall be astonished if such parallel is attempted in the present case;—I was present at the trial of that unfortunate man and his associates; but from something I have heard on this subject, I thought time must have obliterated the circumstances from my memory, and I was obliged to refer back to the book, to see that it is as different from the plot you are required to believe, as it is possible one plot should be from another. There are it is true, gentlemen, fundamental similarities; the leader of that plot, had a feeling of resentment against one person, which it may be said is parallel with this in that respect, and he had ulterior objects;—he, the leader, a soldier, professed that he had four hundred soldiers at his disposal, and that with the influence of an explosion, he could get the rest of the soldiers, and all the people to be on his side.—Colonel Despard said, I have a hundred men who will advance, and take the Tower; is that the case here? here are eight men to advance, and take six pieces of artillery, and to march to the Mansion house. The defence of colonel Despard rested a great deal on the improbability even of his plot; but there was a damning fact on the very face of it, which no art could surmount, which no eloquence could palliate, his particular malice was directed against one individual, and that was the beloved and venerable sovereign then

on the throne; his object was, to take possession of the great cannon in the park, and shoot the king as he went to the house of parliament.—If that was believed, as I know it was believed, then there could be no doubt or difficulty that it was a direct treason against the life of the sovereign himself; and however absurd might be his ulterior views, that by itself constituted the guilt charged in the indictment against him. But this is not at all like the plan of an attack on the lives of his majesty's ministers;—however valuable individually, or however important their services collectively, an intention to attack, or even the actual murder of them, is not treason. I know what I myself felt on that occasion, and I believe, the feeling extended to every one present, least of all excepting the jury, when witness after witness came into court, and deposed as to this part of the plan, and that the colonel being remonstrated with, as to its cruelty to others who might be in the way of the cannon shot, and the impropriety of murdering a man so well beloved as the late king, said, "I have examined the matter well, my heart is callous, and I am resolved to do it." Shall it be said that the rash plot of these persons, stands in the slightest degree of comparison with that, although in Despard's plot there was all the inferior apparatus of a provisional government: of the taking of castles; of securing ports; and occupying roads: but there was as a previous guarantee, an oath of fidelity to the provisional government, which it was pretended already existed, and the concurrence in this was brought home to every one of the conspirators. There were proceedings which implied the existence of such a body, and it was held out that men and money from France would not be wanting, and it was proved that they were confidently expected.—Is this a plot to be put into competition with the Cato-street conspiracy?—one wonders that such a parallel should be resorted to.—I shall be surprised even if it can be forced on the learned Attorney-general, and be treated by him as one tenable, even for the purpose of illustrating a thought, or turning a period.

I am not unread in the history of my country.—I know the plots and conspiracies which have been formed by vile men. I will not refer you to such as that of Long-beard the lawyer, who held his preaching in Cheapside; but as a conspicuous example, look at Wat Tyler's insurrection; had that the least similarity, or was it so much within the scope of improbability as this is? It arose out of the anger of one man, for an insult offered to his own family within his own walls; but far from its being the effort of an individual, the Chroniclers who enter most minutely into the history of the times (I think Hollinshed for one) have said, not only Tyler was exasperated by such an insult, but, that other persons were so in every county and almost in every town in England; and it is much doubted whether Tyler was the beginner of the insurrection, or

whether another man in Essex did not bring it on before Tyler was a party.

But if the popular feeling was roused beyond the possibility of restraint, by the insult offered to Tyler of Dartford, it is evident that there was in the minds of men in general a sense of injury and proneness to resentment which wanted only an immediate provocation; for it is stated that on an insult offered to this man's daughter by a tax-gatherer, which flesh and blood would not endure, under pretence of levying a poll-tax, Tyler hearing a noise in his house, and entering with his lathing-staff in his hand, wrought the officer such a rap on the pate, that his brains flew out and he died instantly. That was the circumstance which roused the country, and occasioned that tremendous insurrection, in which records were destroyed, learning proscribed, nobility trampled under foot, and royalty itself defied and menaced. Is that to be compared to the feeble combination of a dozen persons in a back room, getting at a very small expense such a parcel of trash together, and supposing that by these they could over-run the country, and over-turn the empire? That was during the reign of an inexperienced infant king, advised by imprudent ministers, and deserted or feebly supported by timid friends: that aided by popular feeling of grinding and insulting oppression, ran throughout the kingdom, and prevented the exertions which might have succoured the Crown and relieved the capital: how unlike the feebleness of the present pretended combination; where the strength, the feeling and the influence are all on the side of government, and those who are supposed to meditate its overthrow are distinguished only by their beggary and their obscurity.

Jack Cade is another person, who raised one of these insurrections; but for what? to feel the pulse of the country towards a disputed title—his conspiracy is known and recorded in history, to have been supported by those who wished to put the Lancaster title in issue, and who gave their support under hand, to that false traitor, as he is called in our statutes.—That is as different, as any historical case can be; as different as the evidence before you is from reason, consistency, and truth.

Then I ask you again, is Adams's evidence incredible, as it will appear when it comes to be stated, in all its details? and using the same mode of supplication you have heard from my learned friend,—begging you to keep those observations in your mind, and try the evidence by that test—to forget the garnish of arms, a display more convincing than even all of the eloquence and weight of my two learned friends, who, before the verdict upon this man shall have been submitted to your consideration, will have had to address you.—I ask whether this is a plot you would believe out of the mouth of one witness whoever he might be, and much more out of the mouth of such a wretch as that is?

I proceed to the next point I have to treat

on. Does Adams entitle himself to credit? Is there, in the account he gives of himself and the manner in which he answers questions, either in chief or in cross-examination, that which should induce you to give credit to his testimony? There is, I am told, in a neighbouring country (or at least there was) a time when a display was made by the timid and false-hearted of what they termed a cockade of circumstances; it had two sides, each representing devotion to a different cause; if Buonaparte was uppermost, the side was shewn which presented the three colours; if Louis was in power, then it was white. Such seems to be the description of Adams's conscience; he wears his religion as these time-serving men wore their cockades.

A man may change his party through fickleness, or may comply with those in power through mere inertness, without bad intention; but he who has received baptismal rites at the font, never renounces his faith in his Redeemer without disqualifying himself for ever from being received as a witness. What is the volume which touched his lips when he engaged to tell you the truth, the whole truth, and nothing but the truth? The narrative of the sufferings on earth of that Blessed Saviour whom he denies; the precepts of a religion which he has renounced; the book on which we Christians place our hopes of hereafter, and by which we endeavour, as far as the frailty of man will permit, to regulate our conduct here; a book which he threw away as idle trash, because he had read as he expressed it, the accursed work of Thomas Paine; a book which he has denied as the basis of faith and the anchorage of hope, and yet he now comes before you as a renovated man, and asks you to give implicit credit to his oath. What book has answered the book of Thomas Paine in his mind? What has given him that light by which the errors of the heart and the head have been corrected? No inspired volume has wrought the blessed change; the handcuffs upon his wrists, and the irons on his legs have been his only tutors; and as he found it necessary to come into court to be a witness, he found it convenient to profess himself again a Christian? Flimsy pretext—abominable delusion! Incapable of obtaining credit for the smallest assertion such a man should make, but incomparably too insignificant, to induce a jury of Christians to hesitate for a moment in dismissing from their minds this man, whose statements can only pollute their ears and corrupt their judgments. Apostacy, odious as it is, does not form the whole odium of this wretch's character; he adds to this, as my learned friend has said, disloyalty to his sovereign—treason to his country—treachery to his companions—and he crowns his infamy by a brazen impudence in delivering his evidence. Bring him to the test of his own observations—I asked him, upon repeated occasions, stating to him what that evidence had been, and stating that,

under the correct, I do not say the severe, vigilance of my learned friend on the other side, reprehending me very properly when I mistook any thing—I asked, how came you to omit, from your statement the other day, facts so important as many of those you have related to-day? “Oh, why,” said he, “I did not think they were of any importance in the cause: the prisoner about whom these statements are made, was not then upon his trial; my memory did not serve me, and I have a great many other things in my memory that I shall produce against other prisoners.” This was his own voluntary statement, and this, gentlemen, from a man who is sworn to tell, not the truth partially, not the truth as he may conceive it necessary, but to tell the whole truth, and nothing but the truth, and to act upon that, so help him God. If he had never renounced his Redeemer, or blasphemed the book of life, as he has done, does he entitle himself to be believed by you, when he acknowledges that he is ready to put a construction upon that oath, different from that which all men must? and he sets up as an apology that he did not state these things upon the former occasion, because they did not relate to the prisoner upon his trial! Now, let us try that—the first addition he makes to his evidence is this—“Brunt said, he had two men to call upon in Carnaby-market. He asked Mr. Thistlewood whether he would walk with him, which Thistlewood declined, and I went with Brunt and Ings.” Does that relate in any manner more to the trial on which he was examined yesterday, than it related to the trial of Thistlewood, on which he was here before? Is his account of his suppressing facts, because they do not relate to the case true, or is it true that he invents new matter as he thinks the occasion will require? Again, he tells a long story of Ings doing something at a meeting at which Thistlewood was present, and which would have been of the utmost importance on Thistlewood’s trial, if true; that Ings pulled a pistol from his pocket and declared what he was ready to do, and went to do, when his Royal Highness the Prince Regent was going to the Parliament House, stating it in the midst of a conference with Thistlewood, who was then on his trial, and yet not one word of that did this fellow state; but he takes three days to invent it, against the prisoner now before you comes upon his trial, when he thinks he can more deeply impress his statements by the help of additional circumstances. We have been asked why we require juries to disbelieve witnesses, and yet produce no evidence to contradict them. Gentlemen, can we give locality and substance to the fleeting form of a phantom? Can we concentrate and fix the glittering rays reflected from the polished surface of a mirror? Unless we could do these things we cannot apply effectual contradiction to so unstable a witness as Adams; when we think we shall be able to do so, he avoids us; and when we have posi-

tive evidence in answer to another whom we expect, that witness is kept back from us, although used and mainly relied upon as a supporter of Adams on a former occasion.

In these respects, has Adams entitled himself to credit at your hands from his own shewing? Unless the experience of a small number of years compared with the rest of my learned friends at the bar—unless the knowledge I have of juries which those years have given me—unless the observation of thirty-five years, more or less, constantly applied to courts of justice, deceive me, it does not want the feeble exposition I can give to it to make any honest and discreet jury say, “on the evidence of this man we would not hurt a mouse or a beetle; his evidence with us must go for nothing.”

But I advance this matter a step further: you have seen that he is, in the first place, the narrator of a most improbable story; you have seen in the next place what character he gives of himself, and how he disentitles himself to your credit; is he to be disbelieved the more because the witnesses for the Crown expressly contradict him in many material points? It is a material point for your consideration in the case that is now before you, what passed in Cato-street at the unfortunate time when Smithers lost his life, and when many other valuable lives were in danger; certainly you will see it is. Now is this man supported or contradicted in that? — A person has been brought of the name of Monument, who has been sought as a confirmatory witness; let us see in what does their evidence differ. That there was such a meeting in Cato-street—that there were arms—that there was gunpowder—that there was a man killed—that all those circumstances occurred which every newspaper would have given you, and every newspaper had given you for two full days before Adams was taken into custody — three days before he gave his evidence, all this was known, and about that he would require no confirmation, and certainly receives no support: but is he confirmed, as to his being there, by any witness? In the first place, as to the number of men, he states most distinctly upon his oath, that Thistlewood’s declaration was, that there were twenty men; eighteen above, and two below stairs; that fourteen would be sufficient to rush into lord Harrowby’s dining room; the number was stated specifically, that six would manage the servants, even if they were sixteen in number. If this passed in a room, fifteen feet long, and ten broad, could Monument have been ignorant of it?—but, on the contrary, on quite another mode of interrogatory, and quite another occasion, although it is in relation to the same fact and ending in the same way, Monument tells you most distinctly that the number stated was twenty-five then present—that it was needless to count them, for Thistlewood knew there were twenty-five—and that they would be enough to do the business. That must have been the same

conversation, only with this difference, that the mind of Adams, if he was there, was engaged in the introduction of those who were to frustrate their object, while the mind of Monument was engaged on what passed, and he told the truth. He says further that there was but one candle a-light when the officer came in; that when that one candle was put out, the whole place was in darkness. And that he swears most positively. Both the officers swear that there were more, one that there were five candles in the great room, and he should guess by the quantity of light, at least three in the back room.

Were the words he states uttered by the officer? or are they a fabrication to answer one purpose if they will not answer another? take those words seriously into your consideration.—Adams stated that when the officers came in, they said, "Here is a pretty nest of you, we are officers, and have a warrant to apprehend you; as such, we hope, gentlemen, you will surrender quietly."—If those words were said, all defence of these men must fail on another indictment; for they would, without doubt, be guilty of murder; but did the officers say so?—both the officers examined to it, most distinctly, honestly, and fairly giving their evidence, state all that we said was (for I put down the very words, and they say they were the same in substance), "We are officers, seize their arms;" no word about a pretty nest; no word about a warrant; no word about yielding, or surrendering:—all this is the vile fiction of this wretched witness, who, therefore, on every test he goes through, is unconfirmed, contradicted, and deprived of the very semblance of truth.

I shall be told, perhaps, it does not apply in the slightest degree to the basis and body of this conspiracy, whether there were three candles or eight candles, or one, and whether there were certain words uttered or not. Perhaps some of you have done your duty either here or elsewhere, on the trial of other criminal cases; you have heard prisoners at the bar call witness after witness, to prove an alibi; those witnesses have been kept apart by the policy of the law, and after their examination in chief to the principal point, they have been asked what had you for dinner—what person did you sit next—were there one or more candles on the table—did you get up to help yourself, or was there a footman in livery, or a maid servant; and a discrepancy in the evidence has turned the fate of the prisoner; it would be in vain for counsel to get up and say, my lord, it does not signify a farthing to the case before a jury, whether they ate roast beef or boiled mutton, or whether they had wax lights, or tallow candles, or whether they had a footman or a maid servant, the judge would say, no, sir, but we must see from the account they give whether the witness can be believed in any other respect; then I apply this to the witness, Adams; supposing there were no objection arising out of his own mouth, when

he is contradicted on three points by witnesses called on his own side, is he a man to be believed, to hang up men by eleven at a time, when he gives his evidence from time to time, to carry the inculpation to the prisoners as they proceed in the trials? I hope a better judgment will prevail, and that my client will have the benefit of that better judgment.

It is said an accomplice ought to be confirmed, I say (and I trust I shall have the opinion of his lordship with me upon that subject) that he ought to be confirmed as far as he can be confirmed, for the very term confirmation implies doubt, and every circumstance by which doubt can be elucidated is a circumstance by which his evidence can be confirmed; if there is any thing this corrupt and tainted witness knows, it belongs to those who bring such cases forward to see whether it is or is not within the knowledge of some other who is more fit to be believed.—I say this, I hope, not lightly or rashly, I remember being once told on a prosecution by a learned judge, for whose judgment I shall ever have the utmost veneration, that the duty of counsel for a prosecution is as sacred as that of the judge himself, that if there was any thing within the knowledge of the prosecutor that could elucidate it, it ought to be brought forward, for that the life of a man is not a matter merely of forensic trial; the object is not to get a verdict, but to enable all mankind to do justice, and to see that the ends of public justice are fairly and fully accomplished. If this is true in a private or ordinary prosecution, is it not peculiarly so in this case? yes, gentlemen, it is; for whether eleven men shall or shall not be consigned to the rope of the hangman and the axe of the executioner, is of the utmost importance to each of these individuals; to them it is as important as if on their breath depended the safety of the empire, for to each man his own life is most dear and most cherished; we cling to life amidst sorrow and sickness, in depression, and even in despair. When hope has fled, the love of life remains, and it is for life that the unfortunate man at the bar now appeals to your justice, and to your discernment. But important as the question is to the parties, it ends as to them with the day of their suffering, but as a public record, as a monument of the times, it remains for ever. This conspiracy is the supposed cloud which has overshadowed the dawn of the new reign; whether it is of that density which is supposed, or whether it could be dissipated by a puff of wind, ought to be the main object of the present prosecutions, and in order to shew that in its real colours, their evidence ought to be resorted to, and none to be kept back. If there is any thing to be gained by these trials it is the strengthening of government in the confidence of the people, by a knowledge of the danger to which the government has been exposed, it is the applause of those worthy ministers who have detected and brought to punishment such a

conspiracy as this, and it is upon that alone that the hopes of to-day can rest. Your verdict will decide the fate of that man: for the rest, Europe as well as Britain will judge at the present moment, and posterity will judge for ever: if therefore, any means of elucidation are withheld, all the testimony not produced will, in history and politics, be taken against those who keep it back, and thus not only hardship is wrought against the individual, but the very main spring which should animate loyalty and engage our affections in such a cause as this, will be taken away. The cause belongs first to that unhappy man, who must lay down his life, if you believe the witnesses against him; but it belongs afterwards to you, to me, and to every member of the British community, for our honour is concerned in the honour of our country, and in proportion as that is set high, so shall we rise in the estimation of other nations, and so will our respectability and gratification be increased.

I have done, I hope, except as to one point, with the witness Adams; but there is one part of his evidence to which I beg to direct your particular attention, which will shew you that that is particularly true, in one instance, which I impute to him as the governing motive of his whole conduct—that he has charged upon others those crimes and that guilt, of which he is the author, and which he perhaps alone is capable of forming; he tells you that Brunt professed opinions approaching to atheism; that he said, when he was told that he should have an opportunity of murdering all the ministers at once, that now he believed there was a God, that he had often prayed they might be brought together, and that now God had delivered those persons into their hands. That a man who has read the accursed works of Paine, till he has renounced the faith of Jesus, should use such expressions is probable; but call Brunt a murderer, call him an assassin, call him a traitor, a robber, or what you will, it is not to be credited out of the mouth of such a wretch as Adams—himself an avowed contemner of his bible and his Redeemer—that he who commits crime in this world cuts himself off from the hope of penitence, and that he has not that which the thief on the cross had, a hope that the penitent acknowledgment of his crime might enable him to enter into a state of mercy. I implore you for charity's sake not to impute this to Brunt on the testimony of such a wretch, when they might have called Edwards and others to prove it—Edwards, who is stated to have been present at that conversation, but who is not called to confirm this man in that or any other particular.

There is another point on which you will consider whether Adams is to be believed:—he swears distinctly, that he never had been at the lodging of a man of the name of Chambers, in a court called Heathcock-court, in the Strand: and that we might be sure that it was not the name of the court that might lead to an

equivocation, I took the pains to fix that on him, “supposing it is not Heathcock-court, did you go to any such man, and make a proposal to any such man.”—No, no,—no was the regular answer. I have called the man who proved what he said, and what he did, and what he wanted to leave, and I have proved that every thing he said upon that was like that which he has said upon all other points, an effusion of rashness, or a concoction of premeditated falsehood. I saw the scope of the cross-examination, and I could not fail to see that Chambers was one of the men whom they call radicals—that he was one of those who had carried forward and assisted at meetings of these people—that he was deeply engaged in the exterior of these proceedings. No man can doubt that he was, for if he had not been something of the kind he would not have been a fit person for Edwards and Adams to practise upon—if he had not had the discernment and good sense to see through their treacherous designs, he too would have been at the bar as one of this traitorous conspiracy—his mouth would have been shut by his being indicted with the others; he is not a witness I should prefer to call, but he is a witness whom the treachery of Adams has rendered necessary, and you must weigh his evidence against that of Adams. This, however, is quite clear, from the cross-examination—Chambers was mentioned yesterday; due industry has not been spared in the mean time; all the particulars of his life are well known, and it is not pretended that the height of his crimination goes beyond this, that he was an acquaintance of Thistlewood, and had drunk with him in a public-house, that he was so far transported with the miserable politics infused into the minds of the vulgar, that he carried a flag at the Smithfield meeting, and the triumphal entry of Mr. Hunt. Is he a Deist? Is he a betrayer of his friends? Is he a traitor to his king, except so far as the circumstance of the Smithfield meeting goes?—No, no—no is the answer to all those questions, and his evidence must be confronted with the evidence of a man who is all these. How far such a man ought to be confirmed I will not say, but, standing as he does, I will say that he ought to be dismissed entirely from your consideration in the investigation of this cause. But is there evidence enough without him? for I take this to be a clear proposition, if a witness's credit is doubtful, before he comes into the box, that doubt may be removed by confirmation; but if he has in the box disabled the jury from believing some material proposition he has stated, he is self-convicted of perjury, and the jury must dismiss his testimony from their recollection, and hold him as no witness at all, and so I contend you must consider Adams. It is not for juries to sift and garble testimony, they must believe the witnesses on the whole, or they must dismiss them from their consideration altogether—indeed it would be an insult upon your understandings to say, in this matter the man is perjured—in

such a matter he is not—we will believe so much:—the very word perjured shuts up the leaf of his evidence, it becomes dry and withered, and you read no more; and if therefore you believe, as I contend you must, that this is a false and perjured witness, his evidence goes for nothing, and he is removed entirely from the cause.

I come now to another witness, or to other witnesses; and let me see how far they confirm Adams as to any thing that is material. Hiden certainly stands in a favourable point of view. In one respect, my learned friend, Mr. Curwood, made a mistake respecting him, that he was a man who received the knowledge of the crime and afterwards concealed it: he is not such a man; there is this favourable circumstance in the testimony of Hiden (if you believe him) that when a communication was made of a supposed plot, he disclosed that to lord Harrowby at the first possible opportunity; but we are a long way from believing Hiden for that. That Hiden may have had some knowledge of the intended meeting in Cato-street, and the intention to murder his majesty's ministers, there is every probability; that he learned that from Wilson is a matter of much more doubt; that he may have derived it from Edwards or from Adams is extremely probable, and extremely consistent with the whole of the story, for, with all the wish in the world,—supposing him a conscientious, an honest, and an unprejudiced person,—to give that man credit for what he said, for God's sake examine, whether he is a witness of that untainted kind that ought to make up for the deficiency of testimony in Adams. I asked him where he lived, he told me he lived in Manchester-mews, Manchester-street. I was told afterwards, with some heat, that he had said he had lived there, or that he had been living there, or something of the kind; upon all these subjects you are the arbitrators, and I put it to you whether, until I had pursued my cross-examination to the extent of several questions, if you had been asked on going out of that box, to say who is the witness Hiden; you would not have answered he is a milk-seller, and lives in Manchester-mews, Manchester-street. Would not that have been the impression upon the minds of every one of you? Could you have had any surmise that he had been for several days a prisoner in the Marshalsea-prison, having been translated into the King's-bench for a debt which had been due several months, and for which he had been absconding from Manchester-mews? Can you then receive this man as confirmatory of the evidence in general which has been given by Adams?

But I go a step further: does he by himself (for that is necessary if I am right as it respects this case) does he pretend to know the name of Ings at all? You are trying Ings; I know it is part of the apparatus of the indictment that, being laid as conspiracy, the acts of one are evidence against the whole, and that, therefore, this man can come here to hang Ings on de-

clarations of Wilson; but on whom does the evidence of the conspiracy rest? on Adams, and if he were to be taken away, Hiden has no standing ground. But put it thus:—here is a man to whom a communication of an intent to murder his majesty's ministers is made, and a proposition that he shall join in the attempt. He has, then, that which my learned friend, the Solicitor-general, has much pointed to, a direct interest in the declaration which he makes, because, without alluding to my lord Harrowby's personal character, for which I have as much respect and veneration as I ought to have, can any British nobleman be supposed to have received information from an obscure and humble individual, and not to have done that which becomes him? But there is something remaining to be done: lord Harrowby is too good and too prudent a man to give money to an individual before he has given his evidence, but I need not tell you what a man may expect on such an occasion: why does Mr. Hiden come here to tell you this plan of conspiracy and high treason, but for that which is to raise him from prison, and place him in affluence, because he has made a disclosure which is to save not only the life of lord Harrowby, but some of the best blood in the kingdom, and has enabled his majesty's ministers to detect this dangerous plot?

Then it being avowed that he was not one of the persons, it was unequivocally avowed to him, as he states it, what the destination of the whole plan was, and that he was to be engaged to assist in it; but, more than that, he states this to you, which, even if it were taken as true (and it shews there are proverbially men that ought to have good memories, and proves the use of examining men separately), he states all the houses which were to be set on fire, and there was not in the midst of it one word about the barracks or any one place except the houses of lord Harrowby, the bishop of London, lord Castlereagh, the duke of Wellington, and some others which I cannot mention; and then being asked again, he says, "there was no other that I can remember."

Then, gentlemen, do you believe in all this of the firing of the barracks, and all the rest which has been introduced into the cause by Adams? If such a thing had ever been stated, it is quite impossible that so material a feature should have escaped the memory of Hiden. You have no other evidence but that of Adams, with the confirmation of the serjeant who attends at that place, who says that a man who had been in the light-horse might very well know where the stables were, and the evidence given by the artillery-man that balls made of tar and pitch and rosin would set fire to boards, and still more easily to hay and straw: this is important evidence, as well as that of the man who made the discovery how the word *button* was to be spelt. But I beg you to observe this:—this witness is called to swear not to conversations held in the presence of many persons, but to one private conversation with

one indicted individual who therefore can neither come forward to confirm or refute him, but who leaves the field free for this witness to walk on.

Now, recollect the account which that man has given of himself—of his purchase of cream, and his declining the engagement, because he was to go and purchase it; and his assigning that as the reason of his expecting you to believe all the rest of his testimony, when he knows not the name of a family he has supplied for three years, and cannot give you any particulars even of the number or situation of the house they inhabit. Such frail memories form very insufficient support to the rhapsodies or nonsense of such persons as Adams.

Then comes another witness as confirmatory of this man, Monument, who appears to have been selected only for the penury of his knowledge.—Mr. Edwards was present, and could confirm Adams, if Adams had a word of truth in him; but Monument was selected, because Monument was never present at any of the meetings—he was to be made use of according to circumstances; he was—even on the night of the 22nd—told to go with them, but not where they were going, and that the whole would be disclosed quite in time when they came there—he is brought here to state that which lieutenant Fitzclarence, and all the witnesses saw, and not one fact besides. There is no disclosure from any of them in a body, tending at all to confirm this, but private conversations with one individual at a time, the mouth of which individual, Brunt, is shut up; and another individual, who has already suffered the verdict of a jury, namely, Thistlewood. Is this the way in which a charge ought to be made out, when there are in the power of the Crown the means of elucidating the case.

One of the things this gentleman said in his evidence—on which a little confirmation might have been well bestowed, for he comes as a prisoner in custody—was, that all Gee's-court were to be in it; and there the question is asked of him, who do you understand principally are the inhabitants of Gee's-court—"Irishmen, and they have said they have been deceived by the Englishmen so often, that they would not concur in it unless the English began."—Is there not a witness in the list of the Crown, who lives in Gee's-court, who knew Gee's-court, who knew the persons it contained, and whom they do not bring forward?—it is abandoned in the very presenting it, and they dare not tender the confirmation—he might have told whether Gee's-court contains five, or twenty-five Irishmen—the Crown knew whether or not they had a witness to prove that—it may be known elsewhere, perhaps; but no such witness has been produced; they dare not call a witness to confirm that man, and in so doing, they give him up as not to be believed—he swears to conversations, about which he has no support, where he might have been supported if his evidence were true; but he is not sup-

ported. It was pressed upon him by my learned friend, "Why did not you at Cato-street, if you had no stomach for this fight, depart, when the tall man was told he was at liberty to go?" "Oh, I did not understand that that information applied to me; I thought it was only the tall man that might depart and not me a remarkably little man, and therefore I staid behind. I was too valuable to be parted with"—such a witness stamps his own evidence—that shows how embarrassed he is (though so fluent in the examination in chief), when he comes to give his evidence on those questions for which he has not prepared himself by antecedent rehearsal; and this shows what credit you ought to give to such witnesses.

Now, gentlemen, I must beg your attention under those circumstances, and under the direction of my lord, to the charge upon the indictment, and to the manner in which it is to be proved. I shall suppose, for the purpose of my present argument, that your attention will be principally directed to the third and fourth counts of the indictment, the first of which is under the statute of 36th Geo. 3rd. cap. 7, and which declares it shall be high treason to conspire to levy war against the king, for the purpose, observe, of making him change his government, or alter his measures, or for the purpose of subverting the constitution, and so on. But it is laid to be a conspiracy to levy war against the king, in order by force and constraint, to compel him to change his measures. I ask you, except in the rash and idle nonsense which Adams has talked to you, is there the slightest tittle of evidence of any intention, to force or constrain the king to do any thing? Is there the slightest evidence of intention to depose the king? Is there any evidence of intention to subvert the constitution of the country, by means of levying war, or to deprive and depose the king, as charged in the first count? The second count charges, that they conspired to excite insurrection within the realm, and subvert and alter the legislative rule and government, and to bring and put the king to death. The third charges a conspiracy to levy war against the king. All these are laid as conspiracies, not as acts, in order by force and constraint, to compel the king to change his measures and his counsels. The fourth count charges the prisoner with levying war with intent to subvert and destroy the constitution and government of this realm, as by law established; and to deprive and depose the king of the Crown.

Upon the first three, you will observe, the charge is a conspiracy entirely and altogether, and that conspiracy would not be high treason, unless it were coupled with the intention assigned as the motive of the conspiracy; and to conspire to commit any one of those acts, by the ancient laws of the land, as stated by my learned friend, Mr. Carwood, was not high treason.

Now, gentlemen, you are to satisfy yourselves

whether there is any man, in the whole course of this evidence, who deposes to any such intention as that of deposing or removing the king, except this witness, Adams, whom I contend you are to put out of your recollection: or are there any two men (even giving him as one) who swear to any overt act or acts combined and accompanied by that intention, for the overt acts do not prove the intention; there must be something else from which to collect the intention. Now, I am bound to say that the only overt acts which can be proved as forming any point on which those who charge the prisoner with treason can rely, are those which took place in the meeting at Cato-street. The consultations are entirely in the mouth of Adams, and no other person proves any other treason. The meeting in Cato-street is proved by several persons, but no person connects it with any such intention; but, on the contrary, their conduct rebats such an intention. They were to meet to carry their conspiracy into effect by deposing the king, and seizing the government into their own hands. What were the means they had prepared? a certain number of arms, barely sufficient for an expedition on the high way, applicable to another intention which is disclosed, but not to that which is alleged in the indictment: they are to carry that intention into effect by seizing cannon, eight in number—by conveying them without horses—by acting with them without any ammunition—by attacking the Mansion-house; and, in order to make this formidable attack on the Mansion-house, they place themselves at the greatest possible distance; in order to seize cannon in Gray's-inn-lane, they remove from Brook's-market, in the very neighbourhood, to the very furthest extremity of London, and having performed what they call the West-end job, they are to transport themselves to the Mansion-house, a distance of nearly four, or, as they were to proceed, of five miles; two miles and a half before they can seize the first of those cannon, another mile and a half before they got the rest of these self-moving cannon, and another mile before they place them north and south, to attack the palace of the chief magistrate of the city: they are to make the cannon follow them as tamely as animals wanting their daily repast follow their keepers; and to do it with the more facility, they place themselves at the greatest possible distance from the scene of action.

There is one part of this case upon which I shall have to address you by-and-by, in inquiring whether their situation was well selected for that, but for all other purposes it is absurd to imagine they should have chosen to go to such a place without the means of effecting the end, without any thing that could contribute to success. Now, is there the least evidence or pretence of evidence of this? What says the witness? There were supposed to be twenty men, ten to seize the cannon, ten to light the town, and then they were to be joined by other parties: let us see how that

was; the ammunition seized in Cato-street you have all seen; separate that from any other real or supposed ammunition—is there, I say, the least evidence that any ammunition fit for artillery, even supposing there had been artillery, had ever been carried out, or intended to be used for such a purpose?—Have you any evidence that that was disclosed to anybody?—no, not the least; and if these men (one by-the-by encumbered with two heavy heads in a bag) had sallied forth, they would have gone to places where they had no artillery, and where they had no support; and this is the overt act charged to induce you to convict them of high treason. If I were to hear to-day of a conspiracy from without, to liberate all the individuals in that gaol by throwing cherry stones and carraway seeds, I should think that more likely to be true than this; for my imagination does not go to the extent of believing there can be truth in that which you have heard, I will not say solemnly, but most flippantly, sworn to.

Is there any evidence of a levying war against the king? The transaction in Cato-street, I say, did not amount to a levying of war. If they had met in Cato-street and murdered all his majesty's ministers, that would have been a most horrible and un-English assassination, but it is not high treason; it is no more high treason to murder all the ministers than it was to murder one of the most amiable and honourable men who has existed in our times, the late Mr. Perceval, and for which I saw the assassin stand at that bar, and heard his trial, not for high treason, but for murder; and, with the affecting circumstance, which I shall never forget, that I saw the venerable sir James Mansfield summing up the evidence with tears of regret streaming down his aged cheeks, for an individual whom he had always loved, and whom all who knew revered. If any aggravation could have made such a crime high treason, that assassination presented the aggravation; but the murder of one, or of many, never did, nor ever can amount to high treason.

Supposing they had gone further, and seized the cannon in Gray's-inn-lane, and the artillery-ground, that would not have been a levying of war against the king, for the cannon are not the king's; those at Gray's-inn-lane belong to the body of Light Horse Volunteers, those in the Artillery-ground to a private company; the seizing of those is a felony, but not treason; nor is the Mansion-house one of the king's palaces, it is the official residence of the lord mayor; nor is the Bank the king's, it is the house of a chartered company; so that unless you believe the absurdity of installing a provisional government of whom nobody knows any thing: the narrative taken altogether, falls short of a levying of war to bring it within the description of the 36th of the late king.

I shall not dwell upon this point, I have made my observation upon the law; I have no doubt it will be met with all the confidence of triumph from what I see on the other side.—I

suppose it is considered that it will not bear discussion for a single moment—I am not the oracle of the law—you will hear whether it is law or not from my lord; if he declares it to be within the law, you will then consider whether you are satisfied by the evidence of two credible witnesses, that such intentions were entertained, and that such overt acts were committed, or whether two overt acts have been proved by two competent witnesses; if you should be of that opinion of course you will find the prisoner guilty; but if you are not of that opinion, I am sure nothing which you read in publications, before you knew you were to sit in that box—nothing of the feelings of loyalty which yourselves and I alike entertain—nothing of your feelings of desire for the preservation of those who hold high offices, which no man can feel more warmly than the humble individual who now addresses you—nothing of your fears for your personal safety—none of those considerations and still less any event that may have taken place in this court within these few days will sway you from a right consideration of the evidence; but you will proceed upon that according to the fair impression it shall make upon your minds. All these acts, and even these acts carried further—the conflagration of buildings; the plunder of individuals; the levy of money by irresistible applications at the door of every house-keeper—do not amount to high treason.

Looking at you, gentlemen, I think some of you are of an age to recollect that, which I recollect when young; when blood flowing like water, the conflagration of houses, and the blazing of prisons, appalled and astonished all mankind; when the civil arm was restrained by terror; when the military arm was not used for other reasons, till the intrepid mind of the then Solicitor-general set them in motion; when the persons who had thus acted were secured, they were not indicted for high treason, but for the simple felonies they had committed, for murder, for arson, or for larceny; but not one of those who were immediate actors in that scene was brought to trial for treason: the instigator and prime mover, indeed, was tried for high treason, and it was decided that he was not guilty of high treason, for that he had not levied war against the king. It may be said, that the statute of the 36th Geo. 3rd had not then passed, but still I contend that if all the acts these prisoners had conspired to do had been full and perfect, and completed—except the introduction of a new government, under the name of a provisional government—if all the bloodshed had taken place, and all the conflagration which they are said to have meditated had been effected, still, under the authority of those cases, I say their crime would not have amounted to high treason, so as to substantiate the charge in the fourth count, that of levying war against the king.

Now, supposing after all, I have combated successfully the relevancy and the sufficiency

of the evidence, still there is much for me to account for. Can I say that my clients are men free from all guilt? God forbid that I should stand before you to say so. Shall I apologize for their guilt? Certainly I will not; but I am only anxious that it should receive its right character. Are they guilty of having intended to murder his majesty's ministers? I cannot shut my eyes against the force of conviction that they are. Are they guilty of having pursued schemes of murder or plunder in different parts of the town? The fire-balls, which have been brought would confute me upon that, if I attempted to deny it. Was there a personal vengeance against his majesty's ministers? Did poverty render men desperate, and impel them to crime? I cannot deny it, and for that crime they will have to answer; but that these eleven men, aided by nine others, sought to overturn the state, that they had their confidences to impart, and their associates to seek at the very moment when this plot was to explode, is so absurd, that I do not hesitate to pronounce it incredible and impossible.

It cannot be forgotten that this proceeding hangs mainly, if not almost entirely, on Thistlewood. It cannot be forgotten how lately he had been emancipated from imprisonment for sending a challenge to lord Sidmouth, which his lordship did not accept, but very properly presented him for punishment. It is natural that resentment should rankle in his mind; he took advantage of the transactions at Manchester, and the thanks recommended by ministers to the persons who had taken a part in them; he imparted to others the feelings by which he was impelled, and they, from various causes, co-operated with him; but to suppose that an idea of a provisional government, or of a revolution in the state, entered their minds, would be to say that all their plans were reduced to mere folly, folly more gross than that of ignorance made drunk.

I am now nearly at the close of the address which it is my duty to make. It has been stated to you—and it will I hope be stated twice again—I hope the attorney-general, and my lord, if I may be so presumptuous as to anticipate what either of them may say, will tell you that this is a cause of great importance. Gentlemen, indeed, and indeed, it is not so much for the life which your verdict may take away, as for the principle which your verdict may contribute to establish. It never yet happened that liberty or justice should receive a wound through an attack made on a good man; for on behalf of a good man all mankind arm themselves in their prejudices, and in their hopes; but the attack has always been made through the means of a bad man; and good men have afterwards been sacrificed by force of the precedent. So it is in the present day. If such a witness as Adams can gain credit for what he has deposed,—the revolution of this country, I know, will prevent our seeing Jeffries on the bench,—but we shall have Titus Oates in the witness-box, and audacious wit-

nesses like him denouncing one plot after another. He first swore to the popish plot, and that was so popular that juries gave a ready ear to it, just as honest men would give an ear to a tale beginning in the murder of the most honourable and respectable men, and ending in the overthrow of the state; after the story had been told again and again, after the populace had, with shouts and acclamations, attended the convicts to the scaffold, reason resumed her empire, doubt intruded itself into the public mind, and they who at first triumphed in the overthrow of supposed traitors, came to so sad a feeling of repentance, that when lord Stafford's blood was to be shed on the same evidence for the same plot, when he turned round and protested his innocence, the answer of the sobbing crowd was, "God bless you, my lord, we believe you;" then it was that they felt that justice was misled by the credit given to the testimony of such a wretch; but it could not be got rid of till the revolution had introduced a better system; then indeed it was expiated by the conviction of the perjured witness, by his enduring the pains and indignities of imprisonment, the pillory, and the loss of his ears, and he ended his odious life in poverty and in exile. Alas! gentlemen, one drop of the blood he had shed could not be restored, one hour of the life he had destroyed could not be recalled; the regrets of his own times and of posterity for his victims were alike without avail; but the sight of his triumph, while his villainies were successful, was a perpetual gall to every man who loved freedom, and venerated justice, who loved his neighbour and feared his God, as you do. I exhort, I implore you to look with scrupulous exactness to the witness Adams—to a spy set on by an informer; return to the verdict which your consciences direct you, but for God's sake do not allow yourselves to be swayed by the evidence of a man so infamous, so detestable, so incredible.

Lord Chief Justice Dallas.—James Ings do you wish to rest your defence upon the observations of your counsel, or do you wish to say any thing for yourself?

Ings.—I wish to state the particulars how I became acquainted with the party in the first place.

Lord Chief Justice Dallas.—Any thing, and every thing which you wish to state of course the court and jury will hear; now, therefore, is the time for you to state them: speak loud and we will attend to what you say.—You had perhaps better consult with your counsel.

Ings.—I have but a little to say, my lord.

Lord Chief Justice Dallas.—Having drawn your attention to whether you will consult with your counsel or not, of course you will judge for yourself, and the Court will hear any thing you have to say.

Ings.—I would wish to speak to the gentlemen of the jury—

Gentlemen of the jury, I am a man of no education, I hope you will excuse my humble abilities; I will explain the particulars as far as is in my power. I left Portsea the beginning of May, 1819; I came to London, me and my wife and family. The reason I left Portsea was, I had nothing to do, nor any prospect of getting any employ for the support of my family; when I came to London I thought I should get employment; I had been in London some time—I was disappointed, I could get nothing to do—knowing nobody here, that was the reason. I inquired and used every means I was master of; I had a few pounds by me when I came from Portsea; I found the money was going very fast, and I did not know what to do. I had been in business, and had lost my money, not by drinking or gambling, nothing of the sort, gentlemen—I could not get any thing to do, and I told my wife I thought I had better go into business, with the little money I had. I went up into Baker's-row, and took a little shop, and carried on business from Midsummer to Michaelmas. The summer being very hot, was very much against me; I lost a considerable deal of money in the course of the summer—I could not get any custom—I found my money was very near gone. I went at Michaelmas and took a house in Old Montague-street, and turned it into a coffee shop and eating-house; and having done that my money was all gone. It did not turn out to my desire; I did not make money enough to keep my family. I persuaded my wife to return to Portsmouth, because she would then be among her friends, and that she had better be there without money than in London.

After my wife had left me some considerable time, gentlemen, there was a man used to come and take a cup of coffee frequently; he used to enter into politics about the government—he used to enter into the Manchester massacre, and so on. I did not enter into conversation with him; I supposed him to be an officer. I was after that in Smithfield-market, looking round to see whether I could get employ, having no money, and I met this man. He asked me how I was, and whether I would have any thing to drink.—No, I told him, I did not drink in the morning. He says, "You ought to stand treat. I have been at your house frequently, and never caught you out of doors before." "It is not in my power," says I, "or I would." He asked me the reason I would not stand treat, I said I had got no money, and if I did not get some work, I must sell my few things very shortly. "What have you to sell?"—"A sofa-bedstead, and various articles."—"I should like to buy the bedstead, if it will suit me: what is it stuffed with?"—"Horse hair." I took him to my lodgings in Primrose-street; it did not suit him. This was about the first or second of January.

In a few days I met the same person in Fleet-market; he accosted me there again in

the same way, and asked me whether I would have any thing to drink—I answered him as usual; he said “respecting that sofa, I believe I have got a friend who will buy it of you if you have not sold it.” I said I had not. He said, “My friend will give you more than any one else.” He took me to his friend, and I showed him the sofa, and his friend would not buy it. We came back into Fleet-street, and I went along with him, and had some bread and cheese, and beer. He told me there was something about to be done, would I make one. I asked him what; he said, “No good man wants to know until it is begun; but there is something to be done.” We went and had some bread and cheese, and beer together; then he introduced me at the White Hart to two or three of my fellow prisoners. I asked him what his name was, he said it was Williams, but his name is Edwards. He told me he had made the image of Thomas Paine, at the Temple of Reason, at Mr. Carlile’s, and I understand the same man did make it; so that I am not deceived in the man. He introduced me at the White Hart to take some refreshment with them, but I never knew the business; I had been in the room, but nothing passed about it at the time when I was there, nor did I know the particulars of any thing, because they did not wish to trust me as a stranger. On that very day when we had the bread and cheese, and beer, I went and carried a sword to be ground for him. I left it in my own name; if I had thought there was any thing of this kind going on, do you think I should have left the sword in my own name at the cutler’s? Is that reasonable to be supposed? I had no idea when I carried that sword to be ground, that there was any thing of this kind going on, you may depend upon it. I met him afterwards frequently; I was very short of food, that was the reason I kept them company. I used to get victuals and drink at this room whenever I went; there was a fire, and the weather being so cold, I was glad to go—the man where I was, did not charge me for my lodgings at No. 20, in Primrose-street.

On the 23rd, I believe it was, gentlemen, he comes to my lodgings; he did not find me at my lodgings, I had been at the coffee shop, to get a cup of coffee; I met him in Bishopsgate-street; he says, “I believe there is something going to be done, if you will come up to my house.” He did not say where he lived, but “come up to the alley opposite Mrs. Carlile’s; I shall be there at six o’clock.” I went from there up to the room; I was there up in the room, and got some bread and cheese, and beer, in the course of the day. At six o’clock I went to the alley; he was standing waiting for me there, but I understand he lives up at a side-door somewhere in the alley, by what I have been told in the list of witnesses. I went with him, and he gave me a couple of bags, a belt, and that knife-case, and we came to the room in Fox-court, which has been mentioned, gentlemen; and he and I went

away together from there; and he told me the bags were wanted to put some gin in—that the gin was to be got sly. The reason I put them under my coat was, that the patrols should not see them, for if they happened to see the bags under my coat, it would be discovered where he got the gin. I went up, up against St. Giles’s church—he went where he was to get that said gin. He told me it was not there, but was gone up; accordingly we went up Oxford-street, and he turned out at the left hand, and told me to wait. I believe I waited nearly an hour in Oxford-street for him that very night; he came back to me, and took me to a place I forget the name of the street, I never was there before in my life—John-street, where the arms were taken; I had never been there before. He told me he was going to call upon a friend, and said “Do you stop here, you will see some friends of mine directly.” I came under where the archway is, gentlemen, and I saw Davidson; Davidson took me into the stable, and he went up the ladder, and I staid down in the stable; I heard great confusion up in the loft; I never was in the loft at all, I declare before God that I never was, and I stood listening at the ladder. I had been in the stable about five minutes before the officers came in; there was only me in the stable when the officers came in with Mr. Ruthven, I believe that is the gentleman; there were several came in, and I jumped on one side up in the stall. There were two went up into the loft, and the third that came in collared me, and said, “You are my prisoner.” “Very well, says I,” and as soon as he collared me, he began beating me with a staff, till my head was swelled tremendously on one side. I heard the report of a gun or a pistol, and the officer left me. I ran out into the street and they ran after me, and halloed, “Stop.” I met a man in the street with a stick, he hit me violently over the head; he was coming towards me, and I towards him. I got round that man, and a watchman came and hit me with his stick; I was taken prisoner, and taken to the watchhouse.

Gentlemen, this man, Edwards, has been at all the meetings, he has planned and done every thing whatever that was to be done, and he is not brought forward; he is put into the list as a witness, and I am sold as a bullock that is driven into Smithfield-market, depend upon it, gentlemen, I am sold like a bullock driven into Smithfield-market. The attorney-general knows the man, and he knew all the plans and every thing, for two months before I was acquainted with it. I heard a gentleman when I was up before lord Sidmouth say, when they came out to look at us, lord Sidmouth knew of this a month or five weeks ago; that was when I was apprehended and taken before the council. I consider myself murdered, gentlemen, if this man is not brought forward—he is put on one side. I am ready and willing to die directly, if he will die on the scaffold with

me. He was the inventor of the plot, if it is a plot, and he has known all about it. I do not value my life, if I cannot get a living for my family; I have got a wife and four small children; but I was drawn in this kind of way when I had no victuals and no drink. My anxiety about my wife and family I cannot describe to you, and I hope before you return your verdict upon me, that if you think me guilty you will have this man brought forward, or else I shall consider myself a murdered man. Edwards was the man that came to my house and got acquainted with me. I was not at any meetings; I have been accused of being at a public-house, but I never was, only since January, at a public-house in Brook's-market—I never was at any other meetings—I never attended meetings in my life, till since Christmas:—Gentlemen, I never was at none of the radical meetings in London, not during the time I was here; I hope you will weigh it well in your minds, gentlemen, before you return a verdict. The people you have had before you are people engaged in this plan, and if they can get out of the halter themselves, they would hang their God—I really believe, gentlemen, that man Adams would; but sooner than I would be the instigation of hanging a man I would die, if I had five hundred lives, yes, gentlemen, that I would.

Lord Chief Justice Dallas.—Is there any thing more you wish to say?

Ings.—I have nothing more particular to say, my lord—yes gentlemen, I forgot one thing; if you will examine that, that will prove my character from my childhood;—there is my character down there from my childhood.—[*Handing in a paper*].

Lord Chief Justice Dallas.—We cannot receive that; witnesses to character must give their evidence upon oath.

REPLY.

Mr. Attorney-General.—Gentlemen of the Jury; The case being now closed in evidence and in observation on the part of the prisoner, it becomes my painful and anxious duty to address you; and in doing so, I assure you that as it is my most earnest desire, so it shall be my endeavour to lead your minds fairly and calmly to the conclusion, which not in my judgment, but in your own, you ought to arrive at upon this question; and although I cannot but regret that in so doing I shall have to ask a continuance of the patient attention which you have hitherto paid to this inquiry—an inquiry of infinite importance, both as it regards the individual before you, and as it respects the public—I feel happy that the opportunity is now arrived, that will enable me to remove prejudices which have been attempted to be excited by the learned counsel who have addressed you on the part of the prisoner, as to the nature and still more as to the conduct of this prosecution.

It has been insinuated—nay, it has been stated in terms—that the result of this trial is intended to have the effect of extending the law of treason, and through the medium of your verdict against an unfortunate, and, according to the epithet of one of my learned friends, a wicked man, of creating a precedent to enable future governments and persons hereafter holding the high rank and situation which my honourable and learned friend and myself have the honour of filling, to enlarge the power of the Crown, and sacrifice the liberty of the subject. What there has been in the course of this investigation—what there is in the nature of this case—what there is in the conduct of my learned friend or myself, to call for such observations, I am at a loss to imagine; but sure I am, if I knew myself and my honourable and learned friend, that our only anxiety on the present occasion is, that by the due administration of the justice of the country, and by that alone, the guilt or innocence of the prisoner at the bar shall be established.

The law of treason is definite and clear; but my learned friend, who first addressed you, will give me leave to state that he misapprehends the law as it now stands, when he tells you that an attempt has been made by the statute introduced in the late reign, to extend the law of treason, or to introduce that which he characterizes as constructive treason. He is too good a lawyer—at least I give him credit for being such—not to know that that statute has not extended the law of treason; that it has done no more than make those acts, which before its existence had been determined by the highest authority, and by the sages of the law, to be overt acts of treason under the statute of Edward the 3rd, substantive and distinct treasons in themselves. But my learned friend, knowing this, has endeavoured to prevail upon you to believe (although I am satisfied he will have attempted it ineffectually, because any erroneous impression made by his address, will be completely removed, when in the last stage of this proceeding you shall have heard the law laid down to you by the high authority which to-day presides), my learned friend I say has attempted to persuade you, that not only the late statute had in view the introduction of uncertainty and speculation in the law of treason; but that the object of this prosecution also is, to endeavour to establish a precedent of constructive treason.

There is no foundation either in law or in fact for such insinuations and such assertions; there can be no other motive operating upon the present occasion than a wish that impartial justice shall be done. If the conduct of the prisoner at the bar, and those who are implicated with him in this charge be, as is admitted by both the learned counsel, of the most wicked description, involving them in crimes at which our nature shudders—crimes by the commission of which, according to the sentiments of their own advocates, the lives of those men

have probably become forfeited: let me ask you as reasonable men, what inducement, what interest, what motive can there be on the part of the Crown, to attempt to bring home to them a charge of a higher description, unless it be the firm conviction which operates upon my mind (and which I am afraid must, in the conclusion of this inquiry, operate upon your minds) that a crime of greater magnitude has been committed.

My learned friends on the part of the prisoner, have acted rightly in calling your attention to the specific charge you are to try. God forbid that any other consideration should enter into your minds, when you come to draw your conclusion upon the evidence, than whether that charge, and that charge alone, has been made out. Whatever other guilt the prisoner has incurred, whatever delinquencies he may have committed, discharge them from your recollection; keep your minds steadily intent upon the accusation now made against him, and fairly, calmly, and dispassionately weigh the evidence which has been adduced in support of it. I beseech you to do this, and I ask of you to do no more. After an impartial view of the case, pronounce that verdict which your consciences alone shall dictate and approve: if it shall lead to a verdict of acquittal, you will gladly relieve the prisoner at the bar from the weighty charge made against him: if, on the other hand, you are satisfied that the charge is proved, let no consideration of the consequences of your decision operate upon you: look steadily at the only question into which you have taken a solemn oath to inquire; and fear not from any thing which has been advanced by the counsel for the prisoner, to pronounce a verdict of guilty.

My learned friend the Solicitor-general, when he opened the case to you, stated very shortly the charge made by this indictment, conceiving (and I think rightly) that with respect to the law of the case, there was neither difficulty nor doubt. He said he would relieve your minds from all technicalities; he told you, that which I take the liberty of repeating to you now with perfect confidence, that if you are satisfied that the prisoner harboured an intention of attempting to overthrow the existing government (whether that design could or could not be accomplished—whether the means used were adequate to the end or not), and that he acted upon that intention, he is guilty of the crime imputed to him by this indictment. It is not necessary by the law of treason, that the crime should be consummated, by the perpetration of the act in contemplation; and for the plainest of all possible reasons; if such necessity existed, no man could ever be tried for high treason; if the acts meditated must be executed before the crime is completed, it must be ascertained whether the government is overturned or not, before a man could be called upon to answer to the charge. Without, therefore, troubling you either with the ancient statute of 25th Edward 3rd, or the

more recent act of the 36th of his late majesty, I beg you to keep your attention closely directed to the facts; ask yourselves these questions: did the plot exist? And was the prisoner at the bar a participator in that plot? If you find that the evidence compels you to answer in the affirmative, it then will be your bounden duty to find him guilty of the charge.

Much has been said upon the testimony of the first witness, Adams; indeed almost the whole of the very able and eloquent address you last heard has been pointed at it; and some complaint has been made of the manner in which my learned friend the Solicitor-general, in opening this case, stated to you that his testimony should be examined. My learned friend told you that Adams was an auxiliary in the scheme; he recommended to you, in weighing his evidence, to consider the interest, or supposed interest, he might have in the result of this prosecution; you were requested to see whether he was contradicted upon any material points, and lastly, the Solicitor-general begged you to give your best attention to the confirmation which would be produced to you of his narrative. I still say these are the tests to be applied to that man's testimony, and I very much mistake, if, on the review which I shall feel it necessary to take of his evidence, and when I come to point out to you the parts in which he is confirmed, any man can doubt the truth of the story which Adams has told.

The first question my learned friend on the other side has asked, is, does he entitle himself to credit by the manner in which he gave his testimony? and here he very naturally introduced an answer which Adams gave upon his cross-examination with respect to his former life. Undoubtedly, a very melancholy fact he did admit to you, that during a portion of his life he had been misled by those doctrines which of late have been so industriously propagated, and which I cannot but fear have been circulated principally with a view to lead to these destructive plans and schemes in which we charge that the prisoner at the bar has been involved. It is the object of men, who have sedition and treason in prospect, to endeavour first to undermine the religious faith of those whom they may wish to make their associates in their crimes. He has confessed to you that, by having had in his possession Paine's works, he did for a time become an infidel with respect to the christian religion, but he never gave up his belief in a God: he owns to you that he had abandoned his belief in that sacred volume which is our guide and consolation here, and the sure foundation of our hope hereafter; but he tells you though he had for a time been so deluded, he has returned again to that belief in which he was born and educated. He is not a solitary instance of such a return under circumstances of affliction: another occurs to my mind which has happened only within these few days, and of which I dare say you are all apprised. I

allude to the unfortunate Magennis, at this time under sentence of death for an attempt to assassinate a constable: after his conviction, and when he came to examine his own mind, and to reflect on the situation in which he stood, and the life he had led, that man, in the moments of sorrow, was satisfied that he had been deceived by those who had undermined his faith, and he again embraced the religion he had abandoned. And in considering the conduct of Adams, I think it not at all impossible that his providential escape from Cato-street may have led to that reformation which, I trust, is complete.

You have been desired to attend to the manner in which he gave his testimony. I request you to do the same. It has been said that on some former occasion on which Adams was a witness, but of which you are bound to take no notice, he did not give precisely the same account of minute circumstances as he has on the present trial; that is to my mind the strongest proof of the truth of his story,—you are men of the world and men of experience; is there any thing more suspicious than, when a man has given a long narrative containing various circumstances, accounts of various meetings and consultations, that he should upon a second examination, repeat minutely the testimony he had previously given in the same words, and without variation or alteration?—I say such conduct to my mind would be the strongest proof that the witness told a fabricated and false story. But when his attention is on a second occasion called to other circumstances, and to other persons, that he should remember other occurrences which he had not previously detailed, is not only most natural, but a proof that he comes as the witness of truth: he gave you the fairest account possible; when questioned as to several facts he has now introduced affecting the prisoner at the bar, he said, when I was before here, this man was not on his trial, and I was not then so particularly examined as to the share he had in the transaction; but now that my recollection is awakened, I am enabled to state circumstances that did not then occur to me. But, says my learned friend, he now emits many facts which, upon a former occasion, he gave in evidence: in my opinion such omissions are so far from detracting from his testimony, that they add a weight to it. He narrated the events as they arose in his memory at the time, not from a story learnt by rote, and as a child would repeat his lesson. As men of the world, and as men of experience in these matters, I am satisfied you will consider that the evidence of Adams is confirmed, and his credit established by the very circumstances upon which my learned friend founds his objections to its truth.

I wish, gentlemen, to examine all the objections which are made to the testimony of this witness, before I draw your attention to those strong confirmations which have been very properly passed over by my learned friends

who are advocates for the prisoner, it being their duty to present the case to you in the view most favourable for their client. It is said there are contradictions of him by the other witnesses, and I think those first relied on are as to the number of persons in Cato-street; and it is asserted that Adams is at variance with Monument. Let me call your recollection to what passed there with respect to the tardy appearance of Tidd, the man whom Monument accompanied, and who you will recollect was almost the last person who arrived on that evening. Considerable agitation had been exhibited by the party, in consequence of his not coming at the period at which he was expected; Adams was there long before. Adams tells you that at one period, when the matter was talked of, Thistlewood said there were eighteen in the room above, and two below, making twenty. Now what is the account given by Monument?—that after his arrival with Tidd, and just before they were about to leave the stable, and when some conversation took place respecting numbers, it was stated, I think he says by Thistlewood, that there were then five and twenty. There would be no material inconsistency in these accounts even supposing the fact to which the witnesses are speaking to have taken place at the same time. You have often heard—indeed it is a trite observation—that where witnesses are speaking to the same occurrence, it is the best test of the truth of the story they relate that they do not exactly accord in all the circumstances attending it, but that there are some slight variations between them. I say that even if these men were speaking of the same transaction, you have this fact confirmed instead of being contradicted, namely, that at one period of the evening there was a desire to ascertain the number of the men assembled. Monument, therefore, at all events confirms Adams as to ascertaining their number, and they differ only as to the number when ascertained.

But then you are told there is another contradiction; that Adams differs from the officers, as to the number of candles that were in the room; that he says there was one or two in the first room, the officers on the contrary that there were three or four, and that it appeared to them there were some in the side room from the shades thrown by the persons entering it; and lastly, you are asked to refuse your belief to the account he has given, because he differs as to the expressions used by the officers from their recollection of them. Turn to the minutes you have taken of the testimony given by the officers, and if my learned friend is entitled to argue that Adams's evidence is proved to be untrue by that testimony, I will show you that by the same test it can be demonstrated that the evidence of the officers is not correct. Ruthven saw but one man when he entered the stable: Ellis and another speak to seeing two. It might be said, Ruthven does not speak the truth;

and if my learned friend's mode of reasoning is to be generally applied, you might altogether discard the unimpeached testimony of the officers.

There is another point in which Adams is confirmed by some of the officers, and is unconfirmed by others. Adams states that when the officers were approaching the ladder he heard a voice exclaiming, "Holloa, shew a light above." Ruthven stated that when he went up the ladder he never heard such an expression. I am not sure whether Ellis stated that he did not hear it: but when you come to the evidence of Westcott, he proves there was such an expression. Adams says the officers exclaimed, "here is a pretty nest of you, give up your arms," and the officers say that they cried out "We are officers, give up your arms;" if this discrepancy can destroy the testimony of Adams, it will destroy that of the officers, upon whom the counsel for the prisoner have not cast the slightest imputation.

These are all the contradictions which have been relied upon by my learned friend on the other side, and I hope you will agree with me that the observations in answer are satisfactory. But then he says there is not sufficient confirmation in this case, and that all the confirmation of the witness Adams which ought to be given, has not been adduced. I will venture to assert, and I think you will agree with me, that there hardly ever was a witness confirmed as he has been in such a variety of points, and points too so material to the inquiry. It is said by the counsel for the prisoner (we shall see with what truth), it is true that Adams is confirmed in many particulars, but as to the intention and the plan of the parties, the corroboration of his evidence altogether fails; and yet, gentlemen, this is urged to you by advocates who admit broadly, plainly, and unequivocally, that the plan upon this occasion was to assassinate his majesty's ministers. How do they get at that plan? on what evidence is it that my learned friends make this admission? They make it upon the testimony of Adams,—upon the testimony of Adams confirmed indeed by the occurrences in Cato-street, and the evidence of other persons to which I shall call your attention hereafter.

Let us try the hypothesis submitted on the part of the prosecution. We say there was a deliberate plan formed by the prisoners Ings, Thistlewood, and their associates, to overturn the Government,—that the first blow to be struck to carry that plan into effect was the assassination of his majesty's ministers in Grosvenor-square, on the night of the 23rd of February, and that that blow was to be followed up by movements in various parts of the town. The proposition of the other side is, that the plot was certainly to assassinate his majesty's ministers, but that it was to begin and end there, and that no proof arises out of the testimony of Adams, none out of the evidence of Hiden, none out of the account given by Monument, none from a variety of facts

established, and which cannot be controverted, that there was any design contemplated by the conspirators beyond the destruction of the illustrious persons assembled as guests at the table of lord Harrowby, and the conflagration and consequent plunder of a part of the town.

To prove the case for the prosecution, one of the conspirators himself is called: I beg leave to add my humble recommendation to that of the Solicitor-general, as to the caution and attention with which you should examine such testimony. A man, who admits himself to be a participator in such a scheme, is to be watched with the greatest circumspection, and his evidence is to be most scrupulously weighed; but in this as in every other case, where it is impossible for you to get at the secret consultations and deliberations of the persons engaged, if the testimony of an accomplice cannot be received; the crime must go unpunished; for, if it is to be laid down that an accomplice is not a witness to prove the offence, complete indemnity is offered to persons forming such a scheme: they may proceed as far as they please, knowing that if even their friends prove treacherous, they cannot be received as witnesses in a court of justice against them. Fortunately, however, for the administration of justice, that is not the law in this country; an accomplice is a competent and a credible witness, if his testimony receives confirmation—not confirmation as to every part of his story, for that would in most cases be impossible, and in all unnecessary, for if the law required confirmation of every part of the account of an accomplice, and such confirmation could be adduced, his testimony would not be requisite, the witnesses who could so confirm him, might themselves be examined. If, therefore, you find the testimony of Adams supported in material points, if he relates facts to which other persons of undoubted veracity depose, then you will be justified—you will be bound to conclude that the whole of his account is true.

Now let us see in what points Adams is confirmed, and I will take you, although it may occupy a little of your time, through the different parts of his narrative, and shew you how he is supported. The first thing which he states to you is, that upon his coming out of prison and meeting again with Thistlewood and Brunt, he was carried to a room in Brunt's house, which had been hired by the prisoner Ings for the purpose of their consultations, a circumstance which is proved by Eleanor Walker and Mary Rogers, who tell you that the room had been hired for the prisoner Ings, under the false pretence that he was going to occupy it as a residence; and it is also confirmed by Hale. Was that room used as a lodging for Ings? Did he ever occupy it as such, or carry any furniture there? Was not the only purpose for which that room was used that which Adams states, namely, for the consultations and deliberations of those persons who had this treasonable plan in view?

in this then Adams is confirmed. But it is said it is an unimportant fact. What, is it unimportant to have it proved that persons have hired a room for the purpose of consulting, deliberating upon, and maturing plans of assassination and treason? Have you not confirmation that it was taken under a false pretence? Is it even asserted by the prisoner, or by his learned counsel, that that room was not hired under the colour of being a lodging for Ings, but for the real and only purpose of planning and furthering the conspiracy charged by the indictment, and of preparing those instruments of destruction which you have seen produced in the course of this trial? Adams tells you that meetings were constantly held in that room, from the instant of his emerging from prison up to the 23rd of February. He states to you that impatience having been expressed by these persons as to the accomplishment of their schemes, it was determined that on Wednesday something should be done; he informs you that Thistlewood had appointed a committee to be held on the Sunday morning, in the room adjoining Brunt's apartments, and that such committee met. Here then Adams is confirmed in a most material and important manner. He says there was a larger meeting than usual on that morning; and Hale, the apprentice of Brunt, informs you that the assembly of Sunday was more numerous than any he had ever before observed in that room. What was done in that room? How were these conspirators employed there? Adams tells you that he saw some working upon the pike-staves which have been produced to you, and others upon the grenades and fire-balls which have been exhibited. What does Hale state? That he frequently heard persons working there; that the sound of sawing was not unfrequent, and that he actually noticed in that room the ammunition they had prepared.

What is the next important point? A fact which it was impossible Adams could invent without the certainty of being contradicted if it was not true:—he says that, on the morning of the 23rd, he went into Brunt's room, and saw there a man of the name of Strange, and another person whom he does not know, flinting (I think that was his expression) their pistols, and preparing their arms; how stands the confirmation upon that point? The apprentice boy (between whom and Adams there has been no concert, for there could be none, as Adams has been in custody from within a day or two of the time of the meeting in Cato-street up to the present period), Hale tells you that on that day he saw Strange and another man, whose name he does not know, getting ready their arms, preparatory to going to Cato-street. Who are the persons who attended at this room? Adams enumerates the names of several of the prisoners, and of others who are not indicted; he tells you that Thistlewood, Ings, Davidson, Brunt, Harrison, Bradburn, and Hall used to attend there, and that in ad-

dition to them there were Potter, Palin, and Cook; it was proved by the apprentice boy that every one of those men was in the habit of frequenting this apartment. Is this, then, all invention on the part of Adams? No, he is confirmed by testimony that is unimpeached, and unimpeachable; for no endeavour has been made in the course of this trial to throw the slightest imputation on the character of Hale; no attempt in cross-examination to shake his credit, or to induce you not to believe in the fullest degree the testimony he has given to the court.

But there is another most remarkable fact in which Adams is confirmed by Hale. Adams tells you that, on the 23rd, after they had met in the room hired by Ings, and before they set out for Cato-street, Thistlewood proposed to write a proclamation, which was to be exhibited upon the walls of the houses adjacent to those to which fire might be set, in order that it might be the better read by the populace. He required paper for that purpose, and Adams says, that Thistlewood talked of getting such as newspapers are printed upon, but that on his suggesting cartridge paper, Brunt was desired to procure six sheets. Would a man invent such a fact, not knowing who was sent for the paper, and being quite unconscious that he would be capable of confirmation? It is in evidence before you that Brunt went to his apprentice Hale, desired him to procure the cartridge-paper, that it was procured and taken into the room. Hale, therefore, confirms him as to that fact. My learned friend, then adverted to the contents of the proclamation, and he argued under a mistake for some time that Monument might have confirmed Adams, whereas the evidence was, that Monument was not in Brunt's house at all. Can you, then, when you have these confirmations before you, say, upon the assertion of counsel only, yes, we will believe the paper was procured, but we do not believe that it was obtained for the purpose suggested, although the fact is sworn to by the same witness? And you are asked, because it is said part of this paper was found in the cupboard, to believe that the rest had been used for the making of cartridges, though you have not the slightest evidence that cartridges were at that time preparing; they were all procured before, and all that the conspirators were then doing was accoutring themselves for the purpose of going to Cato-street.

What is the next fact? I should have introduced it before in point of order, and it is a most striking circumstance. It is proved that, on the Tuesday, some alarm had been excited in consequence of Adams's communication that the landlord had informed him they had been suspected of holding improper meetings at the White Hart. You will recollect the agitation that prevailed amongst them upon that occasion; they were so bent upon their schemes that they could not brook the suspicion that their plan was likely to be known; still

more were they offended by the attempt of an associate to damp the ardour of their adherents. In order to ascertain whether there was the least suspicion of them entertained by the government, it was with great shrewdness proposed that a watch should be placed on lord Harrowby's house, to commence at six o'clock, to continue till twelve, and to be again set at four in the morning, in order to ascertain whether any soldiers were introduced into that house, or any other in Grosvenor-square. That is proved beyond the possibility of contradiction. Could Adams be aware of such confirmation? You have heard it flippantly (I do not use the word offensively) treated as a mere confirmation of a game of dominos having been played. It appears to me a most important confirmation; it is shown that Davidson and another were first to watch, and that Tidd and Brunt were to relieve them. Tidd came to Brunt's house in Fox-court after some delay, and departed from thence in company with Brunt, for the purpose of taking their share of the duty in Grosvenor-square, but stated that there was a person whom he wished to see on that evening, a very important man, and that if he should be so fortunate as to meet with him, he should not be able to attend the watch. After a short time, Brunt returned, saying that Tidd had met the man, and that he could not watch, and Adams was selected to accompany Brunt. It is established by the watchman, that a man of colour was seen with another loitering about the square. It is proved to you by Gillan, that on that evening he actually played with Brunt at Dominos, in a public house in the neighbourhood. Thus you have the fact of the watching confirmed beyond the possibility of doubt, and my learned friend might as well argue that because Gillan did not hear them say that they were watching lord Harrowby's house, there is no evidence of the purpose for which they went into Grosvenor-square on that night. Can you be brought to draw such a conclusion by such fallacious reasoning? At the time Adams gave the account, it was impossible for him to know that Gillan could be brought forward to confirm this part of his statement. I say, then, again, this is a most remarkable confirmation of the circumstances which passed on the evening before the 23rd, not less remarkable than the two confirmations of the events of that day to which I have already called your attention; namely, of their coming to prepare their arms at Brunt's room, and the sending for the cartridge paper by Thistlewood to prepare the proclamations.

There is another material circumstance; Adams tells you, that Tidd's house was used as a dépôt for the arms:—do you want testimony on the part of the Crown to prove it? If confirmation is required, you find it in the evidence of the unfortunate young woman who was called for the prisoner. She states that the box containing the cartridges and combustibles had been there a fortnight: let them

have been carried there by whom they might, there they were for the purposes of this conspiracy; and a most remarkable fact she has introduced, with which we were before unacquainted, that on the very morning of the 23rd, some of the articles were removed from Tidd's premises by these persons; I leave you to say whether they were not removed from thence to Cato-street. Here, then, Adams is confirmed in a most important point, not only important as it respects the assassination, but when you come to consider the nature of the things that were prepared, you must be satisfied that the contents of that box were calculated for the execution of a plan embracing other objects beyond the destruction of his majesty's ministers.

Another fact worthy of your attention is stated as to the proceedings of Tidd, on the evening of the 23rd. It is proved by the apprentice Hale, that after some of the conspirators had gone to Cato-street, Tidd called at Brunt's, and received a pike head and a sword, which he said he would take care of, and carry to the place where they were wanted. Monument and Adams tell you, that Tidd did not arrive at Cato-street till after the other conspirators; it is clear, from the testimony of Hale, that he did not set out from Fox-court till all the others were gone.

There is another circumstance in which he is most materially supported, and supported beyond the power of contradiction, a fact which he has not invented, for it is spoken to by others, and confirmed by the seizure and production of the deadly instrument to which it relates. Adams has informed you, that the prisoner at the bar produced a large butcher's knife, and you will recollect the bloody purpose to which Ings stated it was to be applied: Adams remarked that it had wax-end round the handle, which the prisoner said had been placed there to enable him more firmly to grasp it, and to prevent its slipping from his hand. That very knife, be it recollected, is taken from Ings on the night of the 23rd, and on his person afterwards was found the case to which it belonged, and in which he had most probably carried it. Are all these confirmations nothing? Do they not mainly corroborate the whole story told you by Adams? Do you not find his testimony supported in almost every particular in which it is capable of confirmation? and are you then to be told, when his evidence is thus strongly corroborated, that you are to believe him as to one part only of the conspiracy charged, namely, the assassination of his majesty's ministers, and that you are to dismiss from your consideration all he has sworn as to the ulterior objects of this nefarious scheme?

In addition to the knife, you have also a sword, particularly pointed out to you among the many found in Cato-street; that sword was carried by the prisoner, as long ago, I think, as Christmas last, to a shop in Drury-lane, for the purpose of being sharpened, and

particular directions were given by him respecting it. The unfortunate man at the bar states, in the few sentences he has addressed to you in his defence, that he took that sword to the stable by the desire of another person; that it was not his own sword, but that Edwards gave it him, and that he carried it for him. Although you have heard occasionally of Edwards, there is not the slightest proof that he was in Cato-street at all, but, on the contrary, his presence there is negatived; this sword, therefore, must have been carried by some one of the persons who were in Cato-street. In addition to the sword and the knife, Adams speaks of two bags or haversacks, which Ings exhibited before he went from Fox-court; that he accoutred himself with them, and stated that the horrible purpose to which they were to be applied was, to carry off the heads of two of his majesty's ministers, from the massacre in Grosvenor-square; the prisoner is actually found with those two bags suspended from his shoulders; but I am tiring you I fear with the enumeration of these circumstances; but they will make good the assertion with which I set out, that you would find so much of confirmation before you, that it would be impossible for you to doubt the general accuracy of the account of Adams.

I must trouble you with a remark or two on the interest Adams is said to have upon this occasion, and on which so much observation has been made. What possible interest, I appeal to every one of you, can he have in superadding, if it did not exist, the ulterior purpose of overturning the government? Adams is apprehended—he states, there is a nefarious plot to assassinate the whole cabinet, sufficiently infamous, as my learned friend admits—sufficiently horrible; what credit then is he to obtain by charging the conspirators with the further intention of destroying the existing order of things? His interest was all the other way—he had disclosed enough of infamy and guilt, when he had made known the plan of assassination. If the scheme originated in motives of private revenge entertained against the ministers individually, what object could he have in stating that it was a mere step for the accomplishment of other projects? He had already heaped upon his own head, and that of each of his associates, a load of crime, sufficiently heavy to press them down; and what possible motive can be assigned for his increasing their delinquency and his own by stating, that they intended to overthrow the government? the charge so far from giving a greater appearance of truth to his account, was calculated to diminish its credibility in proportion to the magnitude and atrocity of the crime imputed. I submit there is an absence of all interest in Adams to make the offence of these men more heinous than it was, and that nothing can have induced him to implicate them to the extent he has, but a desire of disclosing the whole of the conspiracy, and making as ample atonement as is in his power to the offended laws of his country.

While we are talking of private revenge against his majesty's ministers, permit me to ask, if the gratification of that feeling was the only object these conspirators had in view, why was not the scheme which they originally purposed and approved, of assassinating the ministers at their own houses, persisted in? If the plan originated in hatred and animosity against the individuals, tell me, as reasonable men, what anxiety could they have to take off the whole of the cabinet at one blow, unless it was intended to carry into effect the overthrow of the state, by availing themselves of the confusion arising out of the destruction of all the executive ministers of the Crown? When you find by the concessions of my learned friends (and they have made none which the necessity of the case has not forced upon them, they have admitted nothing it was possible for them in duty to the prisoner to deny), when the counsel for the accused are, by the strength of the evidence, forced to allow that there was a conspiracy to murder his majesty's ministers, and that the prisoners met in Cato-street, for that avowed purpose; I ask any man to assign even a plausible reason, why Adams, a participator in the guilt, should wish to add to the admitted enormity of their crime, by charging them with intentions of a still more atrocious nature.

If, then, Adams has no interest to deceive you, and if you find him confirmed in the material parts of his narrative, what just reason can there be for refusing credit to the testimony he has given to the court? But does the case rest upon the evidence of Adams? do my learned friends imagine, that you, or that I, have blotted out from our recollection all that we have heard from the mouths of the other witnesses? Before I dismiss Adams, let me call your attention to Chambers, who is put into the box to contradict him. My learned friends, to whom the prisoner has confided his defence, examined Adams, as to whether he had called on this Chambers, and used certain expressions; Adams denies using the expressions imputed to him, and the gentleman who last addressed you says, he must admit that Chambers has been mixed up with bad company by my friend Mr. Gurney who cross-examined him—that undoubtedly he is a radical—that he has been carrying flags at different meetings—but that nothing beyond this can be brought against his character. I remember (perhaps they have not escaped your memory) the very forcible observations which were made by the learned counsel who first addressed you on the part of the prisoner (adopting language supposed to have been used by the Solicitor-general, in examining the testimony of a man, who had been stated to have had proposed to him by another, to make an abominable accusation against a third person, with the view of extorting money); my learned friend said, that the Solicitor-general had remarked, that the man who could receive such an application, apparently assent to it, and not communicate

it to a magistrate, was unworthy of credit; and the learned gentleman applied that observation of the Solicitor-general to some of the witnesses on the present occasion. The counsel for the prisoner, not fully anticipating the evidence which Chambers would give, has by these observations cut up root and branch the testimony of that man. Chambers tells you unblushingly, that a proposition was made to him by Adams, to join in a conspiracy to assassinate his majesty's ministers, accompanied by expressions which must have disgusted every man, who heard them, "that he would buy that night on blood and wine." Chambers lives within five minutes walk of Bow-street; but until he is produced before you as a witness, he buries the diabolical proposal in his own bosom; he associates still with his friends the radicals, and he never communicates the nefarious scheme to a magistrate, in order to put a stop to it, and bring to punishment its guilty projectors. Then what credit will you give to this man? If it be argued that a man who has been solicited to join with another to extort money from a third, by making a charge against him affecting his character is unworthy of belief if he conceals the fact; with what force does the observation apply to this most extraordinary witness? How it at once destroys his evidence! According to his own confession, when the proposition was made to him, he did not shew the least disapprobation of it; he exhibited no signs of horror whatever at receiving it from men, of whom, according to his own account, he knew little, and to whom he owed nothing on the score of friendship that could have induced him to keep the communication secret; yet he never divulges it to a magistrate, or any human being, till he is called here to-day for the first time to make it public. Upon this miserable attempt at contradiction of Adams, I will not trouble you with another observation, as I think you will be of opinion, that the weight of credit is due to Adams who denies the conversation, rather than to Chambers who says it passed, and who has till this hour kept it a secret.

The occurrence of Chambers to my recollection, carried away my mind from the witness, Monument. It has been said you should attend not only to the evidence, but to the manner in which it is given. In my opinion, no man ever gave his testimony in a more deliberate or solemn manner than Monument? he was not shaken in a single fact. What is his account?—that he had been introduced to Thistlewood, by a man of the name of Ford, some few weeks before this affair, and that afterwards Thistlewood called upon him with Brunt. It is very material for you to recollect the conversation that took place between him and Thistlewood upon that occasion; the fact of Thistlewood coming and desiring a private interview with him is confirmed by the evidence of his brother, who says that he was at home at the time Thistlewood and Brunt called.

ed. It is broadly asserted that there was no treason in this conspiracy; that nothing beyond an intention to assassinate his majesty's ministers is proved. Be good enough to recollect what it was that Thistlewood said to Monument at that visit.—"Great events are at hand; the people are desirous of a change. I have been deceived by many persons, but now I have a number of men that will stand by me." Great events are at hand!—The people are desirous of a change! What events?—what change? The change of his majesty's ministers? On that change, gentlemen, you had observations offered to you that hardly became the gravity of this momentous inquiry: it was stated that to oppose his majesty's government, and to endeavour to remove his ministers, was not treason; that even for two privy councillors to fight a duel was not treason; and therefore it was argued seriously, that because men in a fair opposition to the measures of his majesty's government might endeavour to displace his ministers, it is not treason to remove them all by assassination. "Great events are at hand, and the people are desirous of a change." Can you doubt that Thistlewood intended to convey to the mind of Monument that a great political blow would soon be struck, and a change in the form of government effected? If not, what did he mean by saying that he had now people that would stand by him, although he had been deceived before? What had that to do with the removal of his majesty's ministers, by fair means? Nothing, gentlemen, nothing. It proves, most satisfactorily, the guilty purpose which was at that time lurking in the minds of Thistlewood and his misguided adherents.

What does Monument prove more? He tells you that when he arrived in Cato-street, apprehensions were expressed as to the numbers there assembled not being capable of accomplishing all the schemes the prisoners had in view. Thistlewood told them they were not to be alarmed, that there were men enough to go to lord Harrowby's and that there were other parties—for what purpose?—not to go to lord Harrowby's, that is not pretended—Thistlewood alluded to parties who were to meet in other parts of the town. This declaration, coupled with facts to which I shall by and by advert—I mean their preparations—shews, beyond all doubt, to the mind of every reasonable man, that their great plan was the overthrow of government, however inefficient the means for that object, and that the removal of his majesty's ministers was only the first step in the march of destruction. Monument is untouched in his character by any thing that has appeared before you, except so far as his going to Cato-street, and his apparent adoption of their schemes affects him; his private conduct is unimpeached, his evidence is uncontradicted.

Then there is another witness of still greater credit, at least I think you will consider him so, I mean the witness Hiden; his testimony,

joined to the meeting in Cato-street, proves this treason. Let us examine what Hiden's conduct and character have been: you have heard motives imputed, you have had interests suggested which might operate upon the minds of other witnesses, let me ask you fairly, what motive can you assign to a man's disclosing a circumstance, as Hiden did, before it took place? Why should he impart the mere expectation of a meeting in Cato-street, if no meeting had been intended? Is there any charge against Hiden? Had he any sinister end to serve by the disclosure? Gentlemen, I must confess, I felt some little indignation while the comments were making by my learned friend on this man's testimony; he said lord Harrowby was a very respectable character, a very worthy man, but still he insinuated to you that money had either been offered—

Mr. *Adolphus*.—God forbid, Mr. Attorney-general. I did not, indeed. I never meant to insinuate any such thing. I said that gratitude would naturally impel my lord Harrowby to do something for the man who had done this to save his life, but that of course nothing would be done till after the trial, and that the recollection would remain upon his mind to the close of his days.

Mr. *Attorney General*.—Gentlemen, I am extremely glad of the interruption. Then my learned friend's remark points only to what may have been passing in the mind of lord Harrowby. He may treat my observation in the manner he thinks it deserves, but I must put you in mind that there is no question asked of the witness as to any expectation of reward in a pecuniary, or any other manner. Then if he had formed no such hope, why is the effect of it imputed to him? Is it intended to detract from the credit of lord Harrowby, or of the witness? With respect to lord Harrowby, it is completely disavowed; it is distinctly admitted that he has not given Hiden money for that which he has done; it is said he must feel gratitude for the preservation of which the witness has been the means, but that no pecuniary reward has been bestowed. What then do you find operating upon the mind of Hiden, when he makes the communication?—at that time there was no charge existing against him, nothing has appeared in the evidence to fix upon him any acquiescence in the communicated plan; he stands before you, not as an accomplice, not as a person lending himself to the wicked schemes of these conspirators, not as a man acting from pecuniary or other improper motives; he comes before you as an individual to whom the plot had been divulged by Wilson, and who feeling it to be his bounden duty to make it known, gives information of it by means of a letter, which he delivers to lord Harrowby, requesting that nobleman to put it into the hands of lord Castlereagh, to whom it was directed.

But see how this disclosure affects the tes-

timony of Hiden in another view. He must have been a prophet if it was not true: how did it happen to be verified by the transaction on the following night in Cato-street? Had he been in Fox-court? Had he ever seen any of the preparations? No, gentlemen, the only knowledge he had gained was by the communication of Wilson, and yet he imparts before-hand events which afterwards take place. Then is there no evidence from Hiden of the ulterior purpose of this plot?—does he tell you that it was confined to the assassination of his majesty's ministers? "He asked me to join their party; I asked for what; he said, to be one of a number who were going to meet to destroy his majesty's ministers at a cabinet dinner; that they had got all ready, and were waiting for a cabinet dinner; that they had some things such as I never saw; that some of them were made of turpentine, and some bound round with cords, and some made with tin, and their strength was such, that if set fire to they would heave up the wall in front of the houses opposite to us; he said, that it was intended to set fire to several houses; he mentioned some, lord Harrowby's the duke of Wellington's, lord Sidmouth's, lord Castlereagh's, the bishop of London's, and one more which I do not remember." For what were these houses to be set fire to after his majesty's ministers were destroyed? If revenge was the object of the assassins, that would have been attained by the horrible murder of the illustrious persons assembled at lord Harrowby's but it does not rest there, and I feel it to be proper to call your particular attention to what Wilson further told Hiden upon that occasion:—"Things," he said, "were to be thrown into the room where the ministers were sitting, and all that escaped the explosion were to die by the sword, and that by lighting the fires it would keep the town in a state of confusion, and in a few days it would become general." There, gentlemen, you have the key-stone to the whole of the object they had in view; inefficient as their means, wild as their scheme, visionary as their purpose may appear to you, sitting here soberly and calmly to consider them, these conspirators viewed them with very different eyes; they vainly imagined that such a blow being struck, the discontented people (as Thistlewood had represented them to be) would join them with an overwhelming force, and enable them to destroy the existing government, and erect another upon its ruins. I say, therefore, that this communication of Wilson to Hiden, coupled with the other facts in the case, proves, beyond all question, the plot they had in contemplation.

But see how the conversations Wilson held with Hiden, confirm Adams also: you will find that after there was a further communication between them on the afternoon of the meeting in Cato-street, Wilson said to him "you are the very man I want." Hiden asked "what is there going to be—Wilson said, there is going to be a cabinet dinner to-night

at lord Harrowby's, in Grosvenor-square, and I was to be sure to come—I asked where I should come—he said I was to come up to John-street, to the Horse and Groom, or to stand at the corner of Cato-street, till I was shoved into a stable. I asked him how many there were to be, he said there were four divisions, one in Gray's-inn-lane, one in the Borough, and one in the city, or Gee's-court, besides that in Cato-street—he said Gee's-court was all in it, but they would not move till the English had begun; he said after they had been at Grosvenor-square, they meant to retreat to somewhere about the Mansion-house, that was where all the parties were to meet; now you will recollect that Adams tells you their plan was, to get possession of the Mansion-house, and make it the seat of the provisional government; he is confirmed in this by Hiden, not one of the conspirators—he said also there were places where they could take the cannon, four pieces in some Artillery-ground, by killing the sentry, and two pieces in Gray's-inn-lane, which could easily be got at, by knocking in some door."

It is argued before you with great force, and with considerable ingenuity and eloquence, that Adams's testimony cannot be believed, because this story of taking the cannon in Gray's-inn-lane, and at the Artillery-ground, is incredible, and therefore the whole must be the invention of Adams, and Adams alone; but you will find other persons did not consider it so visionary—Wilson not only mentioned the plan to Adams, but mentioned it with apparent confidence in its practicability. Thus is the existence of the general plot confirmed, and the testimony of Adams himself in a very material point supported.

An attempt was made on the cross-examination, to shake the credit of Hiden, by an inquiry into his place of residence, and into what he was going about on the evening of the 23rd; and my learned friend had gravely insisted, that because he asked him where he lived, and he answered Manchester-mews, Manchester-square, and it turned out that no longer ago than last Saturday he was taken in execution for debt, and therefore came up in custody of an officer, the first answer was false, although he left his wife and family in Manchester-mews. If such a misfortune should happen to any of you as the being taken to prison for debt, and three days after you were asked where your residence was, would you think you told a falsehood, if you had said my residence is in Manchester-mews, or wherever it may be? The man had just been removed from his house, he was brought up in custody, he could not have meant by that answer to deceive any person, because he knew that a habeas corpus had been issued to bring him here, and that he could not appear but in the custody of an officer; and yet for want of other materials you were seriously addressed upon this topic by one of my learned friends at great length, and asked to disbelieve the testimony of Hiden.

But he was also cross-examined as to a family in Princes-street, Cavendish-square, which he had served for three years, and I cannot forget that the witness was loudly told to be accurate in what he said, because inquiries would be made, to see whether he told truth or not. Many hours have now passed over our heads since Hiden was examined; ample opportunity has been afforded to the prisoner at the bar, to discover whether that fact was true or false; but no witness has been produced to you to shew that he was incorrect in any part of his testimony. Hiden then stands uncontradicted; he is a man against whom there is no imputation of previous bad conduct of any description; he answered most willingly every inquiry respecting the persons with whom he has lived as servant, to whom access therefore might have been had, if any thing could be found against him; it was not last night that the prisoner knew for the first time that Hiden was to be a witness, for by the lenity of our law, as my learned friends know, he has had for nearly a month in his possession a list of all the witnesses who could be produced against him, their places of residence, and their business or occupations, so that he can have no excuse to make that he is taken by surprise, and is not therefore prepared to investigate the character of the witness.

My learned friend made some observations on the list of witnesses, that the number is very great, and therefore, the difficulty they had in considering who was to be called in this or that particular case, was great also; this, gentlemen, is said to induce you to suppose; that the prisoner has been subjected to hardship. Between forty and fifty of those witnesses are either police officers, wardens of the Tower, or police magistrates, whose testimony has not, but might have been wanted, and whose names, therefore, the legal advisers of the Crown were obliged to insert, for this reason, that if the name of a witness is not in the list he cannot be examined against the prisoner. We were obliged to insert not only those who were known to be acquainted with the facts, but those also who, by the remotest possibility, could be necessary to be produced before you. I believe, therefore, every warder of the Tower is in that list, from the apprehension, that something might occur after the prisoners were in custody, that it might be material to give in evidence: all the police officers, all the soldiers who were in Cato-street, only two of whom have been called, are included in it; and therefore the complaint which has been made, appears to me to be one, which, after this explanation, you will think without foundation. They knew as well as we did who the material witnesses were likely to be, and had an opportunity of discovering every thing that could be brought forward against this or that particular witness.

I have now observed upon the testimony of Adams, Monument and Hiden. I do not

trouble you with going over the various points of confirmation, but I beg to call your attention to what took place at Cato-street, and to the materials collected there, with a view to shew the ultimate objects of this plot. It is admitted that one part of the plan was to assassinate his majesty's ministers: what were the instruments provided? Were they only adequate to that purpose, or were they not evidently designed for a larger and more extensive scheme? I know not how many hand-grenades were found; you have seen them, and had one of them opened, and you have heard the effects likely to be produced by their explosion. To the work of assassination many of the instruments which lie on the table are well adapted; I mean the guns, the pistols, and the swords. But were pikes requisite, or were they not rather designed for operations in the streets? A pike in a room is of little utility, and when you see the length of their handles, and the number of them (many more than were necessary for the party assembled in Cato-street), I think you will agree with me that they could be prepared for no other purpose, but to be used in the open air. But gentlemen, 1,200 rounds of ball cartridges have been shewn to you, 965 in the box, and between 200 and 300 found in a bag at Tidd's house—were those designed merely for the assassination of his majesty's ministers?—Can you entertain a doubt that they were intended for more extensive destruction? There is another part of the preparations which hardly requires a remark to satisfy you, it was meant for other objects; you have seen the flannel bags and their contents, and it is in evidence that they are cartridges for cannon, and are made to be used in six-pounders. Were there to be any cannon at lord Harrowby's?—No. How then were these cartridges to be applied? The answer is obvious. Wilson communicated to Hiden that cannon were to be taken at the Light-horse Volunteers riding school, in Gray's-Inn-lane, and at the Artillery-ground: for those cannon these cartridges were intended; no reasonable man can doubt it; some of them were found at Tidd's and some at Brunt's, none in Cato-street; is it not then evident that they were designed for the accomplishment of other deeds of blood, after these conspirators had perpetrated the assassination in Grosvenor-square?

Were no other persons engaged in this plan than those who assembled in Cato-street? Recollect, gentlemen, Hale says, that after the party was gone to Cato-street he was directed to carry any persons that called at Brunt's, to the White Hart in Brook's-market; Potter and others did call; for what purpose? They were not going to Cato-street; they were not of the party to attack lord Harrowby's. The expression of Brunt, when he returned to his house in the evening, confirms the apprentice. "We will go out—all is not over—something is yet to be done." What was to be done? They had been defeated in the plan of assassi-

nating his majesty's ministers. That something was expected to be effected by those persons spoken of by Wilson to Hiden, of whom Palin and Potter were two. My learned friend thought he derived a triumphant argument from the absence of Palin; but I think it operates against the prisoner at the bar; he says, it appears that a reward has been offered for Palin's apprehension, and asks therefore how he can produce him on this occasion; he tells you Palin has absconded—absconded for what?—Is he a participator in the plot at Cato-street? Was he at Cato-street? He has absconded, because he knows there were other purposes in view, traitorous and treasonable, in which he is deeply implicated; that is the reason why he is not forth-coming to-day.

How does this apply to Hall, Cook, Harris, Potter, and others, whom Adams has mentioned? Hall might be produced; my learned friends do not bring him forward; and their argument is this, Adams's story is a fiction, these persons were not there, or if they were there what he states to have passed did not take place. If they were not there they might be called to prove that fact; it could not hurt them; all of them would be able to contradict Adams, and satisfy you that what he has sworn is false; what is the plain inference from this? that they were there; and if they were, as Adams has stated what occurred on several occasions, they might be made witnesses to contradict him. I say, the absence of those men confirms beyond the possibility of doubt the testimony of Adams.

Then if this be so, how stands the case before you in point of proof? The fact of their meeting in Cato-street, the preparations which are made, the intention to assassinate his majesty's ministers, are not only proved, but not denied by the prisoner at the bar. What object had these men in the assassination of his majesty's ministers, if it was not to be followed up by other acts? You have it in evidence from Hiden, you have it in evidence from Monument, the fact itself, the *evidentia rei* shews that they had in their minds that ulterior purpose which we charge, and which is the only question you have to try on this occasion. Do not be deceived by any arguments which you have heard, that you are to consider whether the plan could be effected—whether the means were adequate to the end—whether it was not wild and visionary. To you and me considering the case calmly it may appear to be so; it was wild, it was visionary, my learned friend says, unequalled in folly in the history of this country or any other; and he challenged me to produce before you Despard's case as a parallel, and commented at great length upon the facts of it; and you will recollect that Thistlewood, one of the party, had that plot in his mind, even in Cato-street; for he said, when complaint was made of their want of force, "that if they did not proceed then, it would be a Despard's job." The plan of Despard was

quite as wild and quite as visionary as the present. Part of his scheme was, to assassinate the king, part of this was to assassinate the ministers. Despard thought he could take the Tower and the Bank, with means less effectual than those exhibited on this occasion; he had a few men, but where were his preparations? Had he hand-grenades—had he pistols—had he pikes—had he ball-cartridges—had he all those implements which have been produced to you? he imagined that with twenty men he could take possession of the large cannon in the park, and fire it at his majesty as he was going to parliament, and that they might afterwards make themselves masters of the Tower, and establish a provisional government. My learned friend says, he might have taken possession of the cannon in the Park, and have murdered his majesty; and I say here with respect to the assassination of his majesty's ministers, it appears to me that was not difficult of execution, and would probably have been carried into effect. I will not describe to you what has been so well pictured by my friend the Solicitor-general; I only ask you to conceive what would have been the confusion and terror through the metropolis, if they had been able to accomplish that and some other parts of their plan—if in the dead of the night, the inhabitants of this great city had been alarmed by fires in various places by the report that his majesty's ministers had been destroyed in Grosvenor-square, and that there were parties in arms roving over the town. It is not at all impossible, that for a few hours the conspirators might actually have been in possession of London; there was nothing visionary in the primary objects of their plot; the destruction of the ministers, the firing of houses, were both practicable; I admit the rest of their scheme could not have been carried into effect, nor could Despard's; they were, to a certain extent, both equally wild. If my learned friends cite instances, I cite Despard's case as one, in which similar plans had been conceived, and similar intentions manifested; and for which that unfortunate man suffered on the scaffold.

Then, gentlemen, do not be led away by the notion, that because the conspiracy appears wild or visionary, you are to dismiss it from your consideration; the question is not, whether its objects could have been effected, but whether they were contemplated by the prisoner at the bar, and his associates.

With respect to the facts as they affect the prisoner, I will not go over them particularly; you find him at their various meetings; you find him using expressions at those meetings, indicating his intentions; but, above all, you find him finally at Cato-street:—he says he went there innocently; you will recollect the manner in which he was accoutred,—he had two straps over his shoulders, from which hung two haversacks; he had a belt round his waist in which were a brace of pistols; he had this

knife, for no doubt can be entertained that he was the man who had the knife, his own defence has admitted it; he was by the step-ladder which ascended to the loft above; he was there first seized by the officer, who took from him the knife, and I think, the sword; he then escaped from the stable; he is pursued; you remember the violent resistance he made; this man, who would have you believe he was innocent of any improper object, or any improper purpose, actually discharges a pistol at the officer, and on being interrogated by that officer why he fired at him, he exclaimed, with brutal ferocity, that he wished he had shot him dead.

Then the cloth case of the knife is actually found on his person it has been fitted to the knife, as you have seen, and that case is actually made of the same materials of which the belt round his waist was composed; thus you have him from the commencement of the plot to the close, active in the promotion of this design. I do not trouble you at present, nor will I, with the various expressions he used, the savage exultation he displayed when they found the cabinet dinner was to take place, or his determination to mutilate some of the ministers, and expose their mangled limbs to the populace. But I must beg you to recollect that in Cato-street Davidson was taken; and if any thing were wanting to show the designs of these conspirators, you have it in Davidson's expression—"Who would not die in liberty's cause." Then the cause in which they were embarked was one for procuring liberty by the overthrow of the country in which we live; here is a declaration of one of the party as to the object of their plot.

This being the case, and these the questions for your consideration, I leave with perfect confidence to you the verdict you have to pronounce. I do assure you, gentlemen, unfeignedly, that my only anxiety has been that the case should be presented to you fairly, and with such observations on my part as my duty as a servant of the public calls on me to make in answer to those offered to you on the part of the prisoner. The constitution of the country has wisely placed in your breasts the ultimate determination of this question. It has been represented to you, and truly, by my learned friend who last addressed you, that it is a case of very great importance. Undoubtedly, it is so, but there is nothing so important as the due administration of justice; if the charge has failed in your estimation, in proof, if you entertain a reasonable doubt of the guilt of the unhappy man at the bar (but let it be recollected, it must be a *reasonable* doubt),—then the merciful inclination of our laws will require that you should acquit the prisoner. But if the facts and the testimony by which they have been proved, clearly satisfy your minds that the charge has been substantiated—that the designs which I have stated to you were harboured in that man's bosom, and that he acted with others in the furtherance and completion of them, as the witnesses have

told you—then, important as the case is as it regards the prisoner, it becomes infinitely more important as it affects the public, and it will be your bounden duty to find him guilty. That you will decide uprightly and honestly, no man who has witnessed your attention and desire to scrutinize and weigh this case, can doubt.

SUMMING-UP.

Lord Chief Justice *Dallas*. — Gentlemen of the Jury; this long and painful inquiry being now (so far as regards the proof and the observations from the bar) terminated, it becomes my duty to recapitulate the evidence, with such comments as the circumstances of the case shall seem to me to require. In this late stage of the proceeding, it would be more than superfluous—it would be idle to remind you, that the charge imputes to the prisoner at the bar the highest crime which any subject can commit. Other offences aim at the person or property of individuals, but high treason, by seeking the subversion of the established government, aims at the property, the liberty, and the lives of all. Still, however, nothing will depend upon the comparative magnitude of this offence; for be the alleged crime great or small, every man, standing in the situation in which the prisoner is placed, is entitled to have the charge against him clearly and satisfactorily proved; with this only difference (and I make the observation in the outset, as being in favour of the prisoner), that in proportion to the magnitude of the offence and the consequences which result from his conviction, ought the proof to be clear and satisfactory. Whether, in the present case, it be so or not, it will ultimately be your exclusive duty to determine.

The indictment contains different counts or charges which are founded upon two particular statutes; the first being an ancient statute, to which you have already been frequently referred, and which passed in the reign of Edward the 3rd; the second a more recent act, which passed in the reign of his late majesty. And, in the outset, and before I draw your attention to any part of the evidence, I shall describe the nature and substance of these different charges disentangled from technical and artificial statement. The first count is a charge of compassing and imagining to depose the king—which is made treason by the statute which passed in the reign of his late majesty, the 36th of Geo. the 3rd—and the overt or open acts stated in the indictment, are manifestations of a secret intent; for it is in the intention that the crime of high treason consists. The treason alleged, is compassing and imagining to depose the king, and the overt acts are in themselves such, all or some of them, as are sufficient in point of law to bring the case within the treason charged, supposing the overt acts themselves to be as matter of fact made out by sufficient and satisfactory proof.

Passing over the second, the third count

is a charge of conspiracy to levy war against the king, in order to compel his majesty to change his measures and with respect to this also, I have to inform you, that the overt acts which are stated in support of this count, are clearly sufficient to sustain the charge in point of law, if the acts themselves be established by the testimony before you.

With respect to the two remaining counts upon the face of this indictment, it is not necessary to go particularly into them; the one is a charge of levying war, which need not be particularly adverted to in this case; but this I will say only, if the evidence which you have heard be true, and the insurrection which is sworn to have been intended had taken place, and if it were an insurrection not for a private purpose, but for a public and general purpose, such insurrection would have been a levying war against the king; but in this case, the charge is not the *actual levying* war against the king, but the *conspiring to levy* war. With respect to the remaining count, that of conspiring to put the king to death, I would state to you, if it were necessary, that it is not requisite in order to support a charge of such a description, that any blow should be actually aimed or intended to be aimed at the royal person, or that the natural life of the king should be the direct object of those who enter into a conspiracy of such description; it is enough that measures are meditated calculated to bring about a change in the government, the effect and tendency of which would be as a natural and probable consequence, the death of the king. But, however, with respect to these counts, to render the investigation as simple as possible, you may dismiss them from your consideration, and confine yourselves to the two counts, one of which states the compassing and imagining the death of the king, and the other a conspiracy to levy war in order to compel the king to change his measures. Having thus explained the nature of the charge, to which it will be necessary for you to apply your minds, I proceed immediately to recapitulate the evidence.

The first witness called is Robert Adams, a prisoner in custody upon the same charge as that against the prisoner at the bar. The account which he began by giving of himself is, that before he was taken he lived in Hole-in-the-wall-passage, near Brook's-market; he was acquainted with Brunt; the commencement of his acquaintance with him was at Cambray, who then, in 1816, passed by the name of Morton. He says, "I was myself originally a soldier in the Oxford Blues, about eighteen years ago, and from those I was discharged, owing to illness, and since then I have been a shoemaker. I pursued that trade while I was in France with the English army. When I returned to England, I renewed my acquaintance with Brunt; he lived in Fox-court, Gray's-inn-lane." He is then asked as to Thistlewood; and he says, "I know Thistle-

wood, with whom I first became acquainted on the 12th of January, that was on a Wednesday, in this year; Brunt and Ings introduced me to him; I had known Ings," that is, the prisoner at the bar, "five or six days before." So that with respect to Thistlewood, the evidence of Adams opens with the fact, that he was introduced to Thistlewood not merely by Brunt, but by Ings, the prisoner at the bar. He was introduced to Thistlewood at his, Thistlewood's, lodgings in Stanhope-street, Clare-market. "I had some conversation with Thistlewood in the presence of Brunt and Ings. On Brunt introducing me into the room to Thistlewood, he said, 'Here, Mr. Thistlewood, is the man I was speaking to you of.' 'Is this the man?' he said; and then, turning to me, he said, 'You lately belonged to the Life-guards?' I said, 'No, to the Blues.' He said, 'I presume you can use the sword well, and are a good soldier?' I answered, that once I was a good soldier, and could use the sword well; and that, even now, I could use it to defend myself, if ever it should become necessary. He then said of the different shopkeepers in London, that they were all a set of aristocrats, and all working under one system; that he should glory to see the day that their shops were all shut up and well plundered. He next talked of Hunt, that he was a coward, and no friend of the people; and he had no doubt, if he could get into Whitehall, and overlook the government books there, he should find his name as a spy employed by them. He next spoke of Cobbett, and said he was equally bad; for with all his writings, they were not calculated to do good to the public at all. Nothing further passed at this time. Brunt said, he had two men to call upon in Carnaby-market, and asked Thistlewood whether he would call upon them for the purpose of seeing these men? Thistlewood declined it, and upon that we left the room with Brunt and Ings. On the 17th of January, I went to prison for debt; on Sunday, the 16th," that is, the day before, "I had another interview with Brunt, at the White Hart, in Brook's-market, in a room at the back. At this meeting, Thistlewood, Ings," (the prisoner at the bar) "Hall, Brunt, Tidd, and no other persons that I recollect, were present. It was the following day that I went to prison for debt, and in prison I remained until the day after the death of the king. I saw Ings on the 31st of January, at the White Hart; and I saw him also at Brunt's room in the course of this day; I mean on the second floor front room." He says there was also another, a back room, upon the same floor, and that room was the place at which the meeting took place; this was between six and seven in the evening. "I had never met them before, and I then went to this place for the first time. Thistlewood, Brunt, Ings, Hall, and Edwards were there, and nothing particular passed in the course of this evening. The Wednesday night following was the next time

I was there, about seven o'clock in the evening, on the 2nd of February, and I found Ings, Hall, Harrison, and Davidson there, and Thistlewood, Brunt, and Edwards. There was a conversation between them respecting the indisposition of the new king; they said a few words on this subject. At this time I saw in the room some pike-staves; Thistlewood said, he wished they were feruled, and holes bored at the end of them in order to admit the pike, that they might be taken to a place of safety, which he called the dépôt, not considering them to be safe in the place in which they were. I did not know at this time where the dépôt was; but I learned, afterwards, it was at Tidd's, who lived in Hole-in-the-wall-passage, adjoining the house in which I lived; the staves were green sticks of the substance of my wrist; they were brought from the other side of the water; they were fresh cut, quite green, and thicker than my wrist; the same evening I saw Ings pull a pistol from his pocket; they said in the course of conversation that they thought the king would die; Thistlewood said, *he had rather the new king would live for a little while longer*—and you will attend to this, gentlemen—"as it was not their intention that he should ever wear the crown; he alluded to the people of the country in general, saying that they were all a parcel of cowards; and Ings said, on the day the prince regent went to open the parliament I myself went into the Park, took a pistol in my pocket, with the sole intention to shoot the prince regent; he then pulled a pistol out of his pocket, and said, this is the pistol which I took, regretting within himself that he had not an opportunity to do what he had intended; saying, had he done it, he did not care a damn for his own life. I cannot recollect any thing that passed more upon the subject; the appointed place of meeting was the room in question, and the times of meeting twice in the day, at eleven in the morning, and seven in the evening; in the room there was no furniture, a stove only; and I learned that the room was taken for Ings, the prisoner at the bar, but for what purpose I cannot say, not having been present when it was originally taken. I attended several meetings between that and Saturday the 19th; I saw the prisoner Ings at every meeting I was at; I recollect a meeting before the time of the king's funeral; I found Thistlewood there, Brunt, Ings, Hall, Harrison, Davidson, and Bradburn; they came in some of them afterwards. Harrison had been in the Life-guards. Thistlewood began to tell me what Harrison had proposed; he said he had seen one of the Life-guards, who had told him that on the night of the funeral every man of the Life-guards was to attend it that could be mounted, and that the Foot-guards would be required to attend as well; and in addition to this, all the police officers that could be spared from London; that after he left the life-guardsmen, it struck him that would be a favourable opportunity to collect their men.

together, have a riot in London that night, and take possession of the two pieces of cannon in Gray's-inn-lane, and the pieces of cannon also in the Artillery-ground; it was thought they should be able to proceed onwards by the means of the people, who would turn over to them, and he thought it would be best to send a party to Hyde-park-corner, in order to stop any orderly in his majesty's service proceeding from London to Windsor, to give information of what was going on in London; the telegraph should also be seized, to cut off all communication with Woolwich; it was thought necessary to dig entrenchments across the ends of the roads that led to different parts of London, to stop the artillery from entering London; Thistlewood and Harrison agreed that if the soldiers got any intelligence that there was a disturbance in London, they would be so overtired on their arrival in London, that they would not be fit for duty; Brunt and Ings were not present at this part of the conversation; at the conclusion of the observation they came in; and on their coming in, Thistlewood went to them, and communicated to them what I have been stating shortly; Brunt and Ings, the prisoner, at the bar, disapproved, saying that there was nothing short of the assassination or murder, I am not certain which word they made use of, would satisfy them; I had heard before from Brunt and Ings that there was an intention to assassinate the king's ministers; I do not recollect any thing more particular passing this night. Between this night and the 19th of the month, Ings was often in the room; he said, we must have the ministers if possible, before the parliament shall be met. On Saturday the 19th I was at Brunt's, between eleven and twelve in the forenoon; Thistlewood, Davidson, Harrison, Ings the prisoner, and Hall, were there; on my entering the room they rose, saying, that it was agreed on, that if nothing occurred between this and Wednesday, that Wednesday night should be agreed on to go to work, for they were all so poor they could not wait any longer; Thistlewood proposed there should be a meeting to-morrow morning to form a committee, to draw out the plan upon which we were to act; and on this Thistlewood said, Brunt if you go round to your men give them orders to come armed; Brunt turned round, and said, damn your eyes, are you afraid of officers entering the room? should any attempt to do it, I will take damned good care that none of them should go out alive. They met again on the Sunday morning; it was just turned of eleven; Thistlewood, Brunt, Ings, Harrison, Davidson; Hall, Bradburn, Wilson, Cook, Tidd Edwards, and myself. I had not been long in the room before Thistlewood proposed to enter on business, and that Tidd should take the chair, which he did with a pike in his hand; and after the chair had been so taken, Thistlewood proposed, as they had been waiting so long, and as there was no probability of ministers meeting together, that if nothing occurred be-

fore Wednesday night, the ministers should be taken off separately at their own houses; that they should not be able to destroy so many, but they must put up with what they could get; that they thought three the most likely number they would be able to kill; and he proposed Wednesday-night, but what precise hour of that night I cannot name; it was also proposed, at the same time, that the two pieces of cannon in Gray's-inn-lane, and the six in the Artillery-ground should be taken; and the latter were to be taken, Cook heading the party that were to take them; and after they were taken they were to be loaded on the ground before they went out, and if any body interrupted them, those cannon were to be in readiness to enable them to make a stand. He was then to make a movement to the Mansion-house, and the Mansion-house was to be beset on both sides, three cannon to be brought up against each; he was to make a demand of the Mansion-house, and if the demand was refused he was to fire on both sides; on doing this it was thought they would soon give up the house to them, and it was to be made the seat of the provisional government. After this had been thus secured, he thought that with the two pieces of cannon from Gray's-inn-lane they might attack the Bank of England, and proceed to plunder it; but Thistlewood thought, that it would be necessary not to destroy but to keep the books, as it would be the means of bringing to light some of the proceedings of government, with which they were not acquainted. Palin was not present at this time; but it was proposed that he should be the man to set fire to the different buildings that had been mentioned; as to the time, Thistlewood said it could not be fixed, but that there would be time between that and the Wednesday-night; he thought it better to leave it to a fitter opportunity, and then Thistlewood said he had nothing more to say. Then Brunt came forward and said, that he had a proposal to make respecting the assassination of ministers, and how it was to be done; on which Thistlewood retired, and way being made for Brunt, he came forward to propose his plan, and when he was beginning to speak, Thistlewood said, Stop, you had better let the proposals I have made be put from the chair, to see whether every one in the room is agreeable, and he put it to the men to speak if they wished; the proposal was accordingly put from the chair, and assented to by all. Brunt now came forward and said, that his proposal, respecting the assassination of ministers, was this; he said it would be done in this way, that as many men as they could get together for that job should be divided into as many parties as they could kill ministers; that after the men were singled out for killing the ministers, one man should be drawn out from each by lot, and that man that it fell upon should be the man that should murder the gentleman or the lord, that they had to kill; and if he failed, and shewed the least sign of

cowardice, he was to be run through the body upon the spot; this proposal was agreed to. After that Palin, Potter, and Strange came in, and Thistlewood communicated to them what had passed, and they agreed to it. Palin got up, and said he wished to speak a few words upon what had dropped from Thistlewood and Brunt; he said, I have paid great attention to what has been said, and have agreed to it; and if it can be done, it will be a great acquisition to what we have in view; but this I want to know—you talk of from forty to fifty for the west-end job; you talk of taking the two pieces of cannon from Gray's-inn-lane, and six pieces of cannon from the Artillery-ground, and how is all this to be done at the same time? In addition to which, I am also with my men to set fire to the different buildings; and he wanted to be satisfied how it was to be done. He said you ought to know better than I do what men you have to depend upon; with respect to myself, I can give you no satisfaction as to the men I can bring forward, unless I can be trusted to communicate to them part of the plan, if not the whole of what they are going to do; and when they will be wanted. Upon this, Thistlewood, Brunt, and Tidd said it should be communicated to them; and Palin was satisfied. After the chair was left, Thistlewood turned round and said; Brunt, now Palin is here, you can take him to the place near here, and let him see if it be possible to do what we think; and Palin and Brunt went away together. They were not absent above ten minutes; when they returned, they had been, they said, to a building behind Furnival's-inn, which Palin was to inspect; upon their return, Palin said he thought it a very easy job, and it would make a good fire. Upon this Brunt renewed the subject of the assassination; and he said, he had an idea that there would be no difficulty in drawing the men who were to assassinate the king's ministers. Ings said, whoever has the lot to murder lord Castlereagh, I am the man to turn out to murder that thief; this was on the Sunday. He met them again on the Monday morning at Brunt's, about ten; and he says, when I got there, there were Brunt, Harrison, Thistlewood, and Ings the prisoner at the bar; in the course of the morning others came; and on entering the room on the Monday, they were gathered round the fire and seemed cast down. I communicated the report I had heard, that there had been two officers of the police, one from Hatton-garden, and another from Bow-street, to know what was going on; and that they had intelligence from Bow-street, from which it appeared, that there was an information at Bow-street and at lord Sidmouth's office of what was going on. Harrison turned round and said, you have acted damned wrong. I asked why? Brunt turned round and said, you have; if you have any thing to communicate, it is your duty to speak to me or to Mr. Thistlewood. I said I thought it was my duty to communicate it to all, as it

concerned all; they then began to separate, to call on their men and on the Marylebone Union. On the following morning I went again to Brunt's; on the Tuesday morning, about ten o'clock, I found in the room Brunt, Tidd, Ings, and Hall, and I had not been long there before Ings pulled three daggers out of his pocket; being asked the intention of them, he made a sort of flourish" which the witness described, "and he said it was with a view to run these daggers into their bodies: they were put into his pocket. Just after this Edwards came in, and went up to Thistlewood, and he said he had seen in the paper of the day that the ministers were to dine the following Wednesday at lord Harrowby's. Thistlewood doubted this, not having seen it in the paper which he had seen; and it was therefore proposed that the paper should be sent for. It was sent for, and brought, and read by Thistlewood himself; when it appeared to be so, Brunt jumped about the room for joy, saying I believe now there is a God, for I prayed that he would call these fellows together, and now he has heard my prayer; Ings said, we shall have an opportunity of cutting off lord Castlereagh's head. Thistlewood proposed, that a committee should be formed to consider a plan to assassinate the ministers altogether; it was formed; I was to take the chair, which I did, and I called them all to order, and Thistlewood was going to proceed, but I said first that I had something to say, and stopped him; I begged to know, before they proceeded, whether every man who heard me yesterday morning had given what I had said a due consideration; but upon this," he says, "they were like a set of mad devils; and Harrison said, the first man who said a word to throw cold water upon what they had then in view, he would run that man through directly with a sword; I was removed from the chair, and Tidd was put in. Thistlewood was about to propose a plan, but Palin stopped him, and said, Mr. Adams said something yesterday, and has alluded to it this morning, and he wanted to know what it was before we proceeded further. Brunt said, damn you I will tell you what it is, and then he proposed that there should be a watch set on lord Harrowby's house; that it was to begin at six in the evening, and consist of two men at a time, who were to take notice who went out and who went in, and if they were police officers or soldiers it was to be communicated to the committee; and Brunt further said, that if nobody was found likely to obstruct the business, it should be proceeded on. Then Thistlewood himself came forward; he said it was a much more favourable opportunity to take them all together and at this one house than it would be to take them separately. In taking them separately, at their own houses, they should perhaps have but three or four; but take them all together, and there may be fourteen or sixteen, and that will be a rare haul. I should propose, he said, forty men to go with me; I will go with a note to the door,

to be presented to lord Harrowby, knocking at the door, and telling the servant that I must have an answer, and then on his going in, he proposed that he should be followed by different men, with pistols, swords, cutlasses, and pikes, and if the servants made any resistance, they were to be shot, and the men were to rush in after they took possession of the stairs; two men at those leading to the upper part, and two at those leading to the lower; each was to have a hand-grenade to prevent any retreat, and if any one attempted to escape, they were to put fire to the hand-grenade, and fling it among them to destroy them; two men were also to take the command of the area; one with a blunderbuss, the other with a hand-grenade; and if any attempt were made from the lower part of the house, they were to be served in the same manner; and the servants being so secured, then the men were to enter the house, led by Ings at his own proposal; he said he would go to his lordship's door, with a brace of pistols and a knife, for the sole purpose of cutting off their heads, meaning the heads of lord Sidmouth and lord Castlereagh, and that in addition to this, he would bring away the hand of lord Castlereagh; and having done this, it would be thought in future a great deal of. On entering the room, he added, that he should say, well, my lords, I have got as good men as the Manchester yeomanry; enter citizens, and do your duty; he was to be followed by the two swordsmen, and they were to be Harrison and myself; and after this was done," that is, after the assassination had taken place, "they were to retreat, and Harrison was to take an illumination ball, to go to the horse-barracks in King-street, and fling it into a straw shed, to set fire to them; others of the party were to go to Gray's-inn-lane, to take the cannon there; and on the road there if they met with any interruption, they agreed the persons interrupting should be shot or run through with the pikes they might have. Cook was to go to the Artillery-ground; Ings rejoiced again that he should have an opportunity of cutting off their heads. Harrison was there; he proposed a countersign to be communicated to the men who came forward, and Button was the name; it was to be pronounced separately; the man that came up to the person stationed at the top of Oxford-road, was, on his approach, to say *B, u, t*, and the man who was to receive him, was to pronounce *t, o, n*, and on this being done, he was to be conveyed to the place to be appointed afterwards; this was proposed by Harrison; I went again to Brunt's on that day in the afternoon, at three o'clock; in going up, I perceived a strange smell, and I soon discovered the cause; Ings, Hall, and Edwards were in the room, and I saw that Ings, the prisoner, was making fire-balls for the purpose of setting fire to the different buildings. Edwards was there preparing fuses for hand-grenades. Hall was laying sheets of paper on the floor to lay the fire-balls on

after they had been dipped in the tison pot, to prevent their sticking to the hand; I went away almost immediately, and returned between six and seven, when I found Thistlewood there; there were two strange men, whom I had not seen before; Harris was the name of one, he was then unknown to me; the other was then unknown to me, and is so still. I remained there: Tidd came at half past seven. On his coming in, having been applied to, to go with Brunt at nine, to watch lord Harrowby's house, he agreed: Davidson was to go at six; and, on Tidd's entering, he expressed himself not satisfied at not meeting the man he expected. Brunt then said, it is time for us to go on the watch, to relieve those who had been stationed there, and Brunt and Tidd went out to go to lord Harrowby's. In about five minutes Brunt returned, saying, that they had called at the house where the man was appointed to be, and that he was come; that he was a man likely to be of great consequence, and that, as such, he himself could not go with Brunt on the watch. Ings said, somebody else should go with him. Brunt asked me to go, and I consented: just as we were going out, Edwards came in. I asked him, whether any thing had been seen? He said, what he had seen or heard he should communicate to Thistlewood. When we came to Grosvenor-square, I saw Davidson and another man. After we relieved Davidson, we stopped but a little while; we went to refresh ourselves at a house at the corner of the mews, directly at the back of lord Harrowby's house. Brunt got playing at dominos with a person who was there, and stopped there till eleven. I went out twice, by his desire, to watch, and I stayed in the neighbourhood till twelve o'clock, which was the time to which we were appointed to watch. When I left the square, I came directly home; the watch was to commence again the next morning. Ings and Hall were to be upon the watch at four o'clock in the morning; that is, on Wednesday the 23rd. I went to Brunt's early in the morning, but did not stop; I went again at two o'clock; I found Brunt in his own room; there was nobody else in the room at first, but Strange came in shortly after myself, and two or three other men came in who were not known to me; and a drawer being opened, I saw several pistols; I cannot tell the exact number. Brunt, at this time, proposed to me to go into the regular room, which was the back room; they were putting on leather under the pistol flints; and in the back room I saw arms of different descriptions, cutlasses, pistols, and a blunderbuss with a brass barrel. Just after, Thistlewood came; then the prisoner and Hall; then another stranger or two; and as they came in they prepared themselves with different arms; they then fixed the flints in the fire-arms, and put slings to the cutlasses. Thistlewood looked round, and said, well, my lads, it looks now as if you are going to do something; and he came up to me, and said,

well, Mr. Adams, how do you do? I answered, low in spirits, I have had nothing to drink to-day. Then some gin was brought; and after this, Thistlewood proposed to fetch some paper in order to write some bills: he produced money for the purpose to Brunt, and said, that he should like the same sort of paper as newspapers were printed on. I said to him, as you do not know the name of this paper, you had better get cartridge paper, which will answer as well, and Brunt accordingly sent for it by his apprentice boy. The cartridge paper being brought, Thistlewood sat down to write three bills; but in writing the last, he expressed himself tired; he appeared to be confused, and said, he could not write any longer. Three bills were read by himself aloud, and they were put on the floor to dry, and then doubled up; I saw one of these in Ings, the prisoner's hands, and one in Thistlewood's hands, and the words he read were these: 'Your tyrants are destroyed! the friends of liberty are called together, as the provisional government is now sitting.' And then he read, as subscribed to this, the name of James Ings, Secretary, February 23, 1820. He then appeared tired. Hall then was called upon to write a fourth, but he refused: a stranger was then proposed. Ings was in the room, being busy at this time preparing for action; and he put a black belt round his waist, which was to hold two pistols; he had slung round his shoulder a belt for a cutlass, and on each shoulder there was a large bag, in the form of a soldier's haversack; and this being done, viewing and examining, or looking at himself, he said, I have not got my steel, I am not complete; but never mind. He then drew a great knife, brandished it about, and said, it was a knife to cut off the head of lord Castlereagh and the rest, as he came at them. Being asked, what he had the bags for? he said, he intended to bring away the heads of lord Castlereagh and lord Sidmouth in them: it was a large broad knife that he said he had prepared for the purpose, and bound round the handle with wax-end, to prevent his hand from slipping when at work. After this, Thistlewood and Brunt, who had been out of the room, returned. While they were absent, Palin came in; and when he perceived that Thistlewood and Brunt were not present, he took on himself to address those who were in the room, and said, he hoped all in the room knew what they were met for; he hoped, he said, they would consider it properly; whether the assassination would be approved of by the country, and they would or would not turn on our side. A tall man then made some remarks, saying; you seem to speak as if all in the room knew what is going to be done; I am not afraid myself, nor do I consider a man who turns out in a cause like this ought to value his life. At this moment Brunt entered the room, and seeing a change or alteration in the countenances of those who were in the room, he asked the cause. The tall man told him

again, that there were some in the room who wished to know what they were met there for, upon which having told him this, Brunt answered, this is not the place where you are to be informed, but go up with me to the Edgware-road, and then we shall know, and all who go with me shall have drink to put them in spirits. A blunderbuss, with a brass-barrel, was slung over me under my great coat, a broomstick which had been prepared for the reception of a bayonet at one end was given me as a walking stick. Nothing else particular was then done, except that Brunt said it was time for us to prepare to go from the room where we were, as it would be wanted by Palin's men in the evening. I saw the ferules put on the pike staves in Brunt's room by Bradburn; there was a cupboard in the room, in which were some swords, some tallow, some pitch, and some of the smaller hand-grenades. I had seen in that cupboard, gun-powder, a musket-belt, and the hand-grenades; and I saw powder put in some of the hand-grenades there to complete them. About six o'clock we went away from Brunt's for Cato-street; Brunt and the strange man were with me at first; afterwards I met Thistlewood before I got there, in the Edgware-road, and I arrived at Cato-street, at the corner of the street under the archway; the building was a stable on the right side; I found there Davidson sitting and a person standing, they appeared to me to be doing something to pikes; I went through the stable up into the loft. Ings, Hall, and Bradburn were there, they were taking different arms from a bench in the room; Tidd was not there, and in consequence of his not being there, Thistlewood appeared rather agitated, for fear he would not come; Brunt seeing the men rather confused, for it was pretty general, said there was no occasion for any uneasiness respecting the arrival of Tidd, for that he, Brunt, would forfeit his own existence that Tidd would be forthcoming. In consequence of what had appeared in the faces of the men, Ings now began to be terrified, and" as the witness described it, "as if he was mad; he began to stamp and swear, to put both his hands up to his hair as if he would tear it off; and said 'Damn my eyes, if you drop the concern now, I will cut my throat or shoot myself.' Thistlewood said, for God's sake do not talk of dropping the business now, if you do it will turn out a second Despard's job; and looking round, Thistlewood said, that there were men sufficient, eighteen here, that is in the loft, counting them, and two below, being twenty men in all, which number he said was sufficient; suppose, he said, sixteen servants should be found in lord Harrowby's house, they would not be armed, they would not be prepared; we are armed, and it will not take us, from our entering the house to our coming out again, above ten minutes; Tidd came in in about twenty minutes before the officers entered the room, and he proposed that fourteen should

be the number to enter the house, and it was put and agreed to, and they were selected; at this time Brunt produced a gin bottle from his pocket; Ings was one of the fourteen selected, I also was one, and Harrison was another; this being done and the people ready to go, I heard somebody in the stable; there was a bustling, and a sound, a sort of holloa! shew lights from above! on this Thistlewood took a candle, went to the stairs, and looked to see who it was, and then he put down the candle seeming in quite a confused state; I never heard him speak: at this time two officers entered the room, Thistlewood sidled from where he was into the inner room; Ings and Brunt and Harrison were also in the inner room; the officers stood in the room at the top of the ladder, with a pistol presented, and one of them said, here is a pretty nest of you, adding, gentlemen, we have a warrant to apprehend you all, and I hope you will go quietly; at this time another of the officers of the name of Smithers said to his brother officers make room let me come up; and on his coming up between the two officers, going on between them and looking forward, the group in the room rushed forward, and I saw a man rush forward, another hand presented itself with a pistol, which was fired, and the moment it was fired the candle went out, and I could see nothing afterwards; I did not see Smithers fall; there was now great confusion; the officers seeing Smithers murdered, ran down stairs and gave the alarm of murder; I came out from the stable as I went in, and made my way through; a pistol was fired at me, I think at me, from the window; I succeeded in getting home; while I was under the archway the soldiers were coming through. I was myself apprehended afterwards on the Friday morning, and I have been in custody ever since."

On the cross-examination, he says, "I was examined here on Monday, on the former trial; I was born in Suffolk, and educated as a Christian; I was once a Deist, but I believe in God, I have been a Christian again ever since I was concerned in this affair; I was taken after the 23rd of February, and I have called myself a Christian since; I had, since last August, renounced faith in the Christian religion, and have taken it up again since the time I have mentioned, that is, on the day that this business happened, on the 23rd of February. I never was an Atheist, nor ever denied a God, though I was brought by that accursed book of Paine's, to deny the truth of the Scriptures. When I was in the army, I served in England, in the Blues; I now have no allowance, nor had I any pension on retiring. On looking at a paper, which is not afterwards produced, he says, this is my writing; since Monday I have been in the House of Correction, as I had been before, not in solitary confinement, but I have had no conversation with any body. I have been in the habit of seeing men in this

court, but I have seen no one who has told me what passed; nobody has told me; I am kept in a room by myself, guarded by two men, and heard nothing about the trial, except what I have stated. I have known Edwards since the early part of January; Brunt was on the continent some years ago." Then he says, "I never intended to give information against the others, nor to commit murder; after I had got into the knowledge of what was in hand, I waited an opportunity to get out of it, but I was prevented by threats that had been held out; I was not disposed to plunder the London shops, nor to do any thing of the kind; there were no particular threats made use of at the time that I am speaking of; there were threats the day before I went into prison; I was asking Brunt for the plan that was first drawn up in the presence of Thistlewood; Brunt said, there would be nothing communicated till the day of acting. Thistlewood said, nothing shall be communicated; they said, the day that we think of going to work, we will have the men all together, and give them a treat, and then we shall tell them what is to be done, and after that we will never lose sight of them; Brunt said, there should be no writings kept that should put them into danger, but said, that if any man he had spoken to of this, by his behaviour should induce him to think that he would inform against the others, he would instantly himself run him through the body. I was in prison for a debt of twenty-three shillings and eight-pence. It was on the 16th of January that I heard those threats thrown out by Brunt; it was a Sunday; we were in a room at the White Hart; on the 30th, when I had been in prison fifteen days, I joined those parties again; and when I was discharged from prison, I found that the White Hart, as a place of meeting, was given up during the time I had been in prison; I never knew, till then, of the room taken at Brunt's; on Wednesday, in February, Edwards was there. The other day, when I was examined, I did not tell about Ings pulling a pistol from his pocket, saying, he hoped the king would not die then, and that the duke of York would not come to the crown; I did not tell the other day about Ings saying, they were all a damned set of cowards, that he took a pistol in his pocket when the prince regent went to parliament, with the sole intention to shoot him; that on his making use of that expression, he took the pistol from his pocket to convince them, and exclaimed, there is the pistol that I took, and that he regretted he had not done it, saying had he done it, he had not cared a damn for his own life; and the reason why I did not then tell it was, that it did not come to my recollection till to-day." He says, in order to shew he did not before tell all he knows, the transaction is so multifarious and so extensive, he did not recollect it. He says to-day, "I have not said any thing about their being to go to Brighton and Margate and Dover, and take possession of the

out-ports; if any thing now comes to my mind, while I stay here, I will state it; but it did not occur to me to mention before what I did when I was examined before, that at the meeting on the 19th of February, Brunt said, he had work to finish, and could not go about the assassination next day; and I say now, Brunt being asked by Thistlewood, on the 19th, to call on his men, said he had work to do, and did not know that he should be able to attend. I was at a meeting on Sunday the 20th; at that meeting, before they all left, there were fifteen present, that was when Tidd took the chair; they did not know then of the cabinet dinner at lord Harrowby's, their plan then was to go to the houses of the ministers to assassinate them, and then they were to take the cannon. I think I stated on Monday last, their plan to take the cannon, and go to the Mansion-house, if I did not I forgot it. At the meeting on the 22nd, Ings, took three daggers out of his pocket. There were thirteen different persons present, but I cannot recollect the different individuals who were at each meeting, and what was said by each; I cannot recollect what happened as to each in this way. If I had thought of any thing that was material when I was examined before, I should have mentioned it. The regular time for meeting was that which I before mentioned; and I never remembered our continuing assembled till twelve at night. Brunt said he had left Tidd to meet a man whom Tidd could trust, and therefore that he did not go to the watch. Things transpired on the 22nd which I have not stated either on last Monday or now; what I have mentioned now I cannot say that I mentioned here on Monday last; I cannot say whether I told of Brunt having a man to meet, and in consequence proposing to me to take the watch. I stated the number in Cato-street was twenty; I took that from the statement of Thistlewood (I did not count them myself), that there were eighteen above and two below. I do not know Monument at all. The room might be fifteen feet by ten; we were not close together when the accident happened, and I cannot say whether I was nearest the door, I mean the door leading into the little room, which was in the middle of the room on the side of the room; I was at the end of the bench next the window, where I could see about the room. There was one candle; I cannot say but there might be another, but I never saw but one, and if there were more than one, it was at the time when I was out of the room; and if any man swore there were eight candles in the room he would not speak the truth, and I would tell him that he was a false man. I cannot tell whether the officers made a speech, but to the best of my recollection, one of the officers said, Here is a pretty nest of you! One said, gentlemen, I have a warrant to take you all, and this was the sense and effect of what he said; adding, as such I hope you will go peaceably. I cannot recollect that it was said, We are officers, yield

your arms. Edwards was always very deep, and much in conversation with Brunt and Thistlewood to outward appearance. I went away after this affair quietly. I did not before tell of a pistol being fired at me, I did not know it at the time; but in the coat I had on there is a hole where the ball went; the great-coat I had on is in the room where I sleep. I never called on Chambers, in Heath-cock-court, with Edwards; I do not know where it is. Three or four days before this affair took place in Cato-street, Edwards went with me to buy a pair of boots of a woman; that was the only time of my being alone with Edwards. We called in at the wine vaults near Newport-market; I never called on any person along with Edwards to solicit him to join a party to kill his majesty's ministers, and I never said, I would have blood and wine for my supper. I never knew Stephen Whatman. I never had a conversation with a man in Kingsland-road about the tower, and using Cashman as a watch-word. I did not take any ammunition back after I left Cato-street. Hall, in the room, gave me a pistol and five rounds of cartridges; when the officers came, the pistol lay at the end of the bench next me. I have never handled a pistol since; the cartridges I threw away as I came out. I never carried the large grenade anywhere; I carried some pikes from Brunt's up to Tidd's. I saw Edwards making the fuses and the touch-paper for them. I cannot remember a score of words which Edwards used; what he had to say was in a side-way with Thistlewood or Brunt. I did not tell the story about the one pound note this day which I told on Monday. The largest sum I ever saw was six shillings, given by Thistlewood to Brunt; one shilling at another time, and seven-pence at another. The newspaper Edwards mentioned was the New Times. There was but one candle, which was put out instantly on the report of the pistol, but whether by the report of the pistol I cannot tell."

Now, gentlemen, postponing till hereafter all observation on the testimony of accomplices, I will only desire your attention to the fact, that we are now passing to a different head of testimony, that is, the evidence of persons not accomplices, nor in any way involved in the imputed guilt of these transactions, but witnesses as to whom it is not pretended (and properly not pretended) by those who conduct the defence, that they are not entitled for what they say to the fullest credit from you: and therefore it will be very material for you, as affecting the conspiracy in general, and more particularly the prisoner at the bar individually, to attend to the facts which are now about to be proved by unimpeached and unimpeachable witnesses.

The next witness is Eleanor Walker. She says, "I know Brunt; he lodged at my master's house; he had lodged there about a twelvemonth last January; he occupied two front rooms on the second floor; in January

last he introduced another person to take the back room two-pair of stairs, whom I did not then know by sight, or by name, but I afterwards found out that the name of this person was Ings the prisoner at the bar. The prisoner took the room; I did not know him then; Brunt did not tell me at this time what he was; the room was to be taken at 3s. a-week, unfurnished; he said perhaps he might bring in his goods in a week or better."

On her cross-examination, she says, "I lived in the lower part of the house; I have heard people occasionally going up and down, backwards and forwards, but I did not see them." On her re-examination, she says, "there is a door belonging to my mistress's house, by which lodgers go up from without, without going through the shop, and there is a private door which leads to the staircase, and the back door comes out of the passage towards the stairs; and coming through this, they can go up without going through the shop at all."

The next witness is Mary Rogers, who told you that the former witness is her niece, and was her servant at the time of which she has spoken. She says, "I remember her letting the two-pair of stairs back room in January last; it was occupied for five weeks, and the person who took it paid for four; one week remained due." She says, "the lodging was kept till Brunt was taken up; I asked Brunt who the lodger was; he told me that he was a butcher out of employ; he said, he knew nothing of him, except that he had seen him at a public house, and had heard him inquire for a lodging; and on one evening, when I was putting my children to bed, I saw three men going up stairs, and the middle man of the three was the black man;" which I need not remind you is the description of Davidson (who has been one of the prisoners at the bar included in this indictment, and who is to be tried on a separate indictment) in company with Ings and Brunt.

Joseph Hale is the next witness called; and his evidence also is extremely material. Hale is an apprentice to Brunt, and he says, "I lived with him in Fox-court; he had two rooms in the front of the house, one to live in, and the other to work in; and there I knew Ings, the prisoner at the bar. I remember his taking the two-pair of stairs back room as a lodging; I had seen him in Brunt's workshop about a fortnight before he took the lodging, and more than once. Brunt looked at the room with him; and when they came out, I heard Brunt say to the prisoner, it will do, go and give them a shilling; this was on Monday. Ings came there that evening, and Hall was with him. Ings came and asked Mrs. Brunt for the key" the key being usually kept hanging up in Mrs. Brunt's room; that is, the key of this back room, in which there was no furniture when taken by the prisoner at the bar, and into which it does not appear by the evidence that any furniture was brought. The key being asked for it was brought, and

they went into the room. "I heard others come that evening; and from this time till my master was taken up, persons used to come to the room in the evening, and they were or some of them were, Thistlewood, Ings the prisoner at the bar, Davidson, Bradburn, Tidd, Edwards, Adams, Hall, Potter, Strange; there was no furniture in the room; they used to borrow Brunt's chairs to sit on; Brunt himself used to attend. I saw these persons also occasionally in Brunt's room; they called each other by their names sometimes, and they called Thistlewood sometimes T, and sometimes Arthur," which you know is his christian name. "One day I saw the door open, and then observed some long poles, like branches of trees. I have heard hammering and sawing going on in the room. My master was taken up on Thursday, the 24th of February; on the Sunday before, in the morning, there was a meeting in the room, the persons I have named being then present; there were others besides; it was a larger meeting than usual; they went away one or two at a time; my master was in the room with them; and after the meeting, I saw Strange with my master, in my master's room. On Monday-evening there was a meeting; on Tuesday-evening there was another meeting; on Wednesday several persons came up at different times, I cannot say precisely how many, but several of these came in the morning, and some came in the afternoon. I remember Strange, and a man I did not know, coming into our workshop about two o'clock, and Strange and the other man were then flinting five or six pistols, which they did not finish; for one of the men said, there were persons overlooking them from the houses opposite, and Brunt told them to go into the back room, for they could be seen out of the window of the houses opposite, and they went then into the other room, Brunt and the other men. I saw Thistlewood there, about four o'clock, he asked for a piece of writing paper; I gave him some, he took it into the back room; after that, Brunt came out and told me to go and get six sheets of cartridge-paper; he gave me sixpence to buy it. I went and bought the sheets, and gave them to Brunt; he took them into the back room, and after this some of the men went away; some others went into my master's room; my master went away about six o'clock. After he was gone, my mistress wanted her table for tea, which was in the back room. I knocked at the door, and asked for the table; Potter answered, and gave me out the table, and on opening the door I saw four or five men, besides Potter. I saw Tidd in the course of the evening, who came to Brunt's room. Mrs. Brunt took him to the cupboard, and shewed him a pikehead and a sword, and asked him, what she could do with them? upon which he told her to give them to him, and he would take them away, which he did; he took them into the back room; after that I heard some persons go down stairs; a person came into

my mistress's room, and said, if any person came and inquired, they were to be sent to the White Hart; shortly after three persons came; they did not know the way to the White Hart; I went and shewed them; after that Potter came; I told him the same thing, knowing the way he went himself; my master came home about nine, his boots were very muddy, and the tail of his coat; he seemed rather confused. He told his wife" (this was after the Cato-street business), "it was all up, or words to that effect, that where he had been, there had been a lot of officers come in, that he had saved his life, and that was all; as he said this, a man came in, Brunt shook hands with him, and asked him, if he knew who had informed? he said, no, he had himself received a terrible blow on his side, and was knocked down; and from their manner of speaking together, I judge they had been together. As he was going away, Brunt said, there was something to be done yet, and they went away together. When they were gone, my mistress and I went into the back room, and I saw a long pole in the corner of the room; and in the cupboard I saw several rolls of brown paper and tar; some round balls I saw also, made with string, and tar all over them. I have heard since, that they are hand-grenades; they are tied with rope yarn: they were the same that were found by the officers the next morning. There was also an iron pot in the room which belonged to Brunt, and there were two flannel bags, which were full. My master came home about eleven, and directed me to rise in the morning as soon as I could, and clean his boots, which I did; he then asked me if I knew the Borough? I said, Yes.—If I knew Snow's-fields? No.—He told me how I was to find them, and that I was to go to Potter, Kirby-street, Snow's-fields. He desired me to bring a rush basket into the back room, and he took another, and desired me to put those things into the basket which I have described as having seen the night before; one was tied up with a blue apron of Mrs. Brunt's, which had been used as a curtain to the window of the back room; the other was not tied up; he then went into his own room, and looked for something to tie it up with; at this moment two officers came in and seized them. On the Sunday to which I have spoken, I think at the meeting there were about twenty present."

On cross-examination, he says, "I was not surprised particularly at the meetings; I did not suspect what they were about, nor had I any knowledge of what the pistols were for; I never was in a court of justice before; nor ever before a magistrate, except when I was examined about this business."

This ends, for the present, the testimony of these three witnesses—coming forward, under the circumstances I have stated to you—wanting no confirmation as to any part of their testimony, and who prove against the others, and the prisoner at the bar, the

facts which I have stated to you—the taking of the room for the prisoner—the employment of that room—the approach to it by the stairs—the backway—the frequent meetings—their continuing for five weeks, down to the discovery which took place in Cato-street—the arms seen from time to time—the putting all the bags in the room taken for Ings, and the other circumstances I have stated.—How far this evidence is material, if there were no other evidence to confirm the account given by the witness Adams, or whether it be at all material, and if so, how far material, in combination with all the other evidence to which your attention will be drawn, it will be for you to consider when you compare the different parts of the case.

The next witness called is Thomas Smart, who is a watchman in the parish of St. George's, near lord Harrowby's house. He says, "I was on the watch, on the night of Tuesday the 22nd of February, in Grosvenor-square; I saw four very suspicious looking characters, about half-past eight or a quarter before nine, on the 22nd of February, and one of these was a man of colour; there was a tall man with him: they were peeping down the area, and I left my watch at seven in the morning. Bissix was a watchman at the same time with me; he and I met every half hour, at the end of our round; and I told him there were some suspicious characters, and to keep a look out after them."

Charles Bissix is next called, who says, he is a watchman in Grosvenor-square, and was there on watch on the 22nd of February; "at about a quarter before nine I was at the end of my beat, on the same side on which lord Harrowby lives; there were two men passed me, one was a dark man, a man of colour I believe; he said, watchman, is it almost nine? to which I answered, within a few minutes."

Henry Gillan is next called; he says, that he used the Rising Sun public-house, the corner of Charles-street and Adams-mews; and he says, "on Tuesday, the 22nd of February, I was there when there came in two persons, and I afterwards played at dominos with Brunt, between nine and ten in the evening; I was there before he came in; another man came with him; they had bread and cheese, and some porter, and we played about half an hour. I left the house first and I left it about ten; I know that it was the 22nd of February by the list by which I carry out my medicines; I have not the list with me now; that is the only recollection I have of it."

Then John Hector Morrison is called, who says he is a journeyman to Mr. Underwood the cutler, in Drury-lane, and worked with him at Christmas last, remembers on Christmas eve last, a person bringing him a sword to sharpen; he was dressed like a butcher.—To this part of the evidence you will of course attend, in connection with the testimony that will afterwards appear;—the time when this

happened—the circumstances under which it took place—the circumstances of who brought this sword—all are highly material. He says, that the person in question brought a sword to his master's shop, on the day before Christmas-day; he says, he was dressed like a butcher; "Ings, the prisoner at the bar, was the person who brought the sword; he called three days after, and paid me nine pence for grinding it; he told me to grind it, and to make the point particularly sharp, and to make it cut both back and edge; it was a short sabre. After this he called again, and brought a very long one, which might be a fortnight after, and then he gave me the same directions which he had given before as to the other. It is customary with us to ask the name, that we may know to whom we are to return the things when they are called for; and he said, Ings or Eames was his name, to the best of my knowledge;" and, looking to the prisoner, he says, Ings is the man who, at the time in question, brought these two swords, with a direction to have the point, the edge, and the back, the one long, and the other short, sharpened. This is the evidence of a person not connected with the conduct of any of these parties, in any of these transactions, but a witness on whose testimony no observations of an adverse nature can be made, or have been attempted.

Then Edward Simpson is called; he is corporal-major in the second Life-guards. "I know Harrison; he was formerly in our regiment; he has been on duty at King-street barracks; I cannot say how long, but he had been there long enough to know the different state of the barracks in the course of his duty; he would be perfectly acquainted with them; the barracks join Gloucester-mews; there were formerly" (that is before the transactions that were discovered on the night in question) "windows looking into the Mews; those had been stopped up three or four days after the affair in Cato-street; there was straw in the room always, and hay likewise, and if anything inflammable had been thrown in, and the straw had caught, it would have been the destruction of the whole barracks."

The next witness is James Aldous, a pawnbroker in Berwick-street, Soho. He knows Davidson: "he pledged a brass-barrelled blunderbuss with me, which he redeemed on the 23rd of February, in the morning; he said nothing at the time; I have seen it since; it was shown to me at Portman-street-barracks by the officer;" this blunderbuss being one of those proved to have been taken on the night in question proved by this witness to have been pawned with him by Davidson.

Now, gentlemen, we return, after these six witnesses—impartial and unconnected with the case—to a person who stands in some respect in a particular and peculiar situation; and I now call your attention to the evidence given by Thomas Hiden. He says, that he is a cow-keeper and dairyman, living in Man-

chester-mews; that he knows the prisoner Wilson; he had known him shortly before last February. Wilson I need scarcely remind you is one of the persons who has been proved to have been from time to time present at these meetings, having conducted himself in the way in which he appears to have done on the testimony of former witnesses, some of whose evidence I have read, and the remainder you will presently hear. He was also taken on the night in question, as will appear from the subsequent part of the evidence, in Cato-street. "He asked me if I would be one of a party who were going to meet to destroy his majesty's ministers, and he told me they had got such things as I never saw, and they were waiting for a cabinet dinner; he said the things were made of tarpaulin, tin and powder, and that it would heave up one of the walls of the very house by which we were walking; he told me that they were to destroy his majesty's ministers; they were to have a cabinet-dinner, and at what time he would let me know; they were going, he said, to light up some fires." Now with this you will connect the evidence which stands also on unsuspicious testimony—the testimony of officers, by whom in the various places these fire-balls were afterwards found—with the account given of the nature of them and their effects, by the serjeant of the artillery who was afterwards called as a witness. He tells you, that Wilson, one of the persons who had attended these meetings, and who is charged with being one of these conspirators, told him that they were going to light up some fires; "he named lord Harrowby's house, the duke of Wellington's, lord Sidmouth's, lord Castlereagh's, the bishop of London's, and one more which I do not know. He said I had no occasion to be afraid, that a gentleman's servant had furnished them with a certain sum of money, and if they would act upon the occasion or on the subject he would give them a considerable sum more; he told me"—and you will have the goodness, gentlemen, to attend to this—"that by lighting the fires and keeping the town in a state of confusion, in a few days it would become general; that the hand-grenades were to be lighted for the purpose of being thrown into the room, and all that escaped the fire were to die by the edge of the sword, or some other means; but, he added, if I did make one of them, Mr. Thistlewood would be glad to see me, and I told him I would make one; after this"—and this is material for you, gentlemen, to consider; this person was not at the meeting on the night in question in Cato-street, nor at any of the former meetings, nor was ever himself apprehended on any charge of conspiracy or crime—"I wrote to lord Castlereagh, it might be two or three days after; I went to lord Castlereagh's, but could not see him; I delivered it to lord Harrowby in Hyde-park; it was on the day of the discovery that I saw Wilson again in Manchester-street, who said, you are the very man

I want to see; he said, there would be a cabinet-dinner at lord Harrowby's in Grosvenor-square, and I was to be sure to come; I wished to know where, he said to John-street, to the Horse and groom; he told me I was to go into the public-house, or stay by the corner till I was shoved into a stable close by; that I was to meet him at a quarter before six or by six; I asked him how many there were going to be? he said about twenty or thirty there, but those were not all, for, he added, there was a party in the Borough, and another in Gray's-inn-lane, and another in the city or Gee's-court, I am not certain which he said; he said that all these living in Gee's-court were in it; but they would not act unless the English began first." You have heard from other evidence, that the court in question is chiefly inhabited by Irish, and therefore Wilson told him that they would not act unless the English began first; indeed it is followed up by saying "Gee's-court had all embarked in it; he told me they were all Irishmen that inhabited Gee's-court; he said after they had done in Grosvenor-square, they were to meet somewhere about the Mansion-house; he told me, also, there were pieces of cannon which could be easily got in Gray's-inn-lane, by knocking in a small door; that there were four pieces at another place, which they could get by only killing the sentry in the Artillery-ground, where exactly I cannot recollect; I promised him to come, and he promised me to be there a quarter before six; I went to John-street, but I was behind my time in consequence of business; it was nearly seven o'clock; I saw Wilson and Davidson; Davidson is the man of colour; they stood at the corner of the gateway; I had known Davidson a long time before; they said, you are behind your time; I said, yes, I could not keep it; Davidson asked me if I was going in, saying, Mr. Thistlewood was there; I told him I could not go in, for I had been employed to go and get some cream, and I asked when do you go away; he said, he thought about eight, and if gone away, I was to follow them into Grosvenor-square, and he told me that I was to be at the bottom of the square, the fourth house from the corner at the bottom of the square; Davidson said, come you dog, this is the best thing you ever had to do with in your life." Upon a paper being produced to him, he says, "this is the letter which, before this meeting in Cato-street, in Hyde-park, I myself personally delivered to lord Harrowby."

On his cross-examination, he says, "the letter is my writing. I was a cowkeeper about four years; I never was a shoemaker before I was a cowkeeper; I was a gentleman's servant, and I was brought up to farming; I lived in my last place, at colonel Bridges's in South Andley-street, that is six or it may be seven years ago, I cannot precisely say; he had the whole house, but whether it was a hired house furnished by him or taken furnished, I do not know; I did not live long with him, it might be two or three months, it might be two or it

might be one, at this distance of time I cannot exactly say which; I lived with major Dive; a year and three months, in Tavistock-street, Bedford-square, I lived there as a footman, he keeping only one; I then went to Mr. Brice, in Stratton-street; for the last five years I have been a milkman or a cow-keeper, I have lived in Manchester-mews three years, my family has been there; I have been two or three or four months from home at a time, and I have been lately for debt in the prison of the Marshalsea; I was in prison for about eighteen pounds due to Mr. Powell, who is a milkman and a cow-keeper, I went in last Saturday, being taken then in execution. In the beginning of last summer, I was out of the way between two and three months, it might be June or July or August, or the beginning of September, but not so late I believe as October; I was at home at different times in July and August, my wife and my family carry on the business, she and my family remained there and carried on my business for me; my family still live in Manchester-mews, at least they did last Saturday morning, and they have been there all the time I have mentioned, and are there now for all I know; they are living there now, my sister told me so to-day; I have known Davidson for three or or four months; I do not know Edwards; I know a Mr. Edwards; the person you are inquiring for may be the person whom I know; the Mr. Edwards I know lives two hundred miles in the country." therefore he thinks that cannot be the person about whom the counsel for the prisoner was inquiring; he says, "I carried on the business of milkman in Durweston-street, by the Edgware-road; I have been twice to the Scotch Arms in a small court by the Strand, I went to the shoemakers' club, I went with a friend of the name of Clark, a tailor; I cannot state what was the subject of conversation, it was seven or eight months ago. I only know the prisoners Davidson and Wilson, and had conversation with them, I had seen Davidson it might be a week or fortnight before; I had never been at Fox-court; I knew nothing of this particular affair till Wilson told me; the cream is a great profit to me, I might gain two or three shillings by that order, it was for a family I was to get the cream; they lived at No. 6, Princes-street, Cavendish-square, I have served them for three or four years, I do not know their names, I have had orders for cream repeatedly from them, our people brought home the order, I did not go to the house, my wife or sister went to tell them it could not be got; I do not serve them myself nor ever did; my wife serves them I believe; I have been at the house many times, I have seen maid servants there, I cannot say when I was last there; I serve them daily; I do not know what quantity of cream was ordered for that night; we get a shilling profit upon a pint, and more than a quart was ordered; I do not know the name of any servant in the house; it was the first time I met Wilson that he said I had no occasion to be afraid, for

there was a gentleman's servant who supplied money;" he then says, "he told me so at two different times, I had known him long before, and have often met with him; I never went into Cato-street, only to the corner."

On the re-examination he says, "I carried on my business till last Saturday, in Manchester-mews; I was taken last Saturday in execution. I think the number was 6, of the gentleman's house who was to have had the cream, and I think it was the first door on the left-hand-side from the square, going down to Oxford-street." Now this is, you see, a witness who, more or less, but not altogether, has on this day at least been described to you as an accomplice; whether he is so or not, or in what particular situation he stands, I shall consider more fully hereafter. But at present, you will remember that he is a person who, though he tells you he in words consented (and whether in heart or not it is for you to judge) to go with these persons on this purpose being communicated to him by Wilson originally, yet, before the hour arrived in which this fatal project was to be carried into execution, he appears to have gone with a letter to the noble lord to whose evidence I shall afterwards call your attention—a letter first intended for lord Castlereagh; but such was his anxiety, not having been able to see that noble lord, that he went to lord Harrowby's house; finding he was riding, he went to the Park; and in the Park, before the meeting took place, he delivered the letter in question. Now, I can only say that it is not merely most extraordinary, but unaccountable, that he should have been able, unless gifted with the spirit of prophecy, to deliver a letter to lord Harrowby, before the meeting in Cato-street, giving him notice of a conspiracy there going on, if it were merely a thing as yet in the womb of time!

The next witness who is called is lord Harrowby himself. He tells you, that he is president of the council; that it is usual to have cabinet dinners; and that in February last these dinners had been interrupted by the death of his late majesty. In the latter end of the week preceding the 23rd of February, he caused cards to be issued inviting the members of the cabinet council to dine with him on Wednesday the 23rd of February; he then mentions, with their respective offices, the several persons who were to have been present at that dinner; and you will see how far this agrees with the number stated to the persons assembled in Cato-street, by Thistlewood as likely to be present at the cabinet dinner, and who were there stated to be fourteen or sixteen. His lordship mentions the lord Chancellor, the earl of Liverpool, Mr. Vansittart, earl Bathurst, lord Castlereagh, lord Sidmouth, lord Melville, the earl of Westmorland, the duke of Wellington, Mr. Canning, Mr. Wellesley Pole, the earl of Mulgrave, Mr. Robinson, and Mr. Bragge Bathurst; and his lordship afterwards adds, fourteen besides himself;

"all these were members of the privy council; my house is on the south side of Grosvenor-square, next door to the archbishop of York. On Tuesday, the 22nd of February, I was riding in the Park, and I was accosted by a person whom I did not then know; I now know that person to be Hiden; he gave me this letter, addressed to lord Castlereagh; he said it was of material importance to lord Castlereagh, as well as myself and some others, and wished it to be delivered immediately. I was myself going to Carlton-house, to attend the council that was held by the king; and therefore, not finding lord Castlereagh there, I despatched it with a note from myself to him. I met Hiden in the Park, by appointment, the next morning. He made a communication to me there; the communication which he made to me is contained in the letter, except that which I have spoken to before; and I should add, that at this time, he personally made that communication to me in more general terms. The plan of the dinner, upon this, was given up for that day; I dined at Fife-house, the earl of Liverpool's. The preparations at my house proceeded to all outward appearance," that the plan of giving up the dinner might not be known to the persons assembled, "as if the company had been to dine there, till they were stopped by a note I sent from lord Liverpool's (which being despatched between seven and eight from Fife-house, I conceive reached my own house about eight o'clock) to say that the cabinet dinner could not take place. I had concealed from my servants the alteration of the plan, and every thing went on as usual. I had no communication with any person as to this particular thing; but we had information, long previous to this, of some general design of this nature being intended." Here, therefore, you see (if the fact could be doubted upon the testimony of Hiden, if Hiden could be considered at all an accomplice, which you will judge) whether he is completely confirmed by the noble lord who has given this evidence, proving that Hiden gave him a letter in the Park, which gave him the information contained in that letter, and upon which they had previous general information. Lord Harrowby having left the court, was called back; and Hiden was called up; and his lordship says, "that is the person who delivered me the letter."

The next witness, is John Baker, butler to lord Harrowby; and he speaks to same effect as lord Harrowby as to the dinner.

Now we fall back to the testimony of a person who undoubtedly is an accomplice, namely, John Monument; who introduces himself by telling you that he is at this time a prisoner in the Tower. He says, "I met Thistlewood at the house of a person named Ford, about two or three months before the meeting in Cato-street; about a fortnight after, he called on me; Brunt was with him; I was in the room, and my mother and my brother were with me;

he was in the room five minutes, when he called me to the outside of the door; Brunt did not go out with us; he said great events are at hand"—here again, gentlemen, you will attend to what follows—"great events are at hand; the people every where are anxious for a change; he had been, he said, promised support by many men, who had deceived him; but now he had got men that would stand by him; he asked me whether I had any arms; I said no; he said no man should be without arms, every one who belonged to him had arms; some a sabre, some a pistol, some a pike, and that I might buy a pistol for four or five shillings. I said that I had no money to buy a pistol; he said that he would see what he could do; there was no other conversation at this time; I returned into the room; Brunt and Thistlewood went away together. Two or three days after this, Brunt called on me by himself; he said he was in a hurry, and nothing particular passed; on the 22nd of February, Brunt called again, in company with Tidd, about two or three o'clock; I said I thought I had lost you; he said the king's death had made an alteration in their plans; I asked what plans; he said there would be a meeting on the following evening at Tyburn-turnpike, where I should know all the particulars; and then he turned round to Tidd and asked, should he give me the word? and Tidd said yes, he supposed there was no danger; and then he told me that if I saw any people about, I was to say to them *b, u, t*, and if they were friends, they would answer *t, o, n*, making the word *button*; he said he would call the next morning and tell me further particulars; they then went away. On the following day, Wednesday, Brunt called on me between four and five o'clock; he called me down stairs, and told me that he wanted me to go with him; I told him that I could not then, for that I had some work to finish; he asked me when it would be done; I told him not before six; he told me then I must go to Tidd's house, and he told me where Tidd lived, in Hole-in-the-wall passage, Brook's market; he went away, and at half-past six I went to Tidd's; I found him at home; he said he was waiting for some more men, and they had not come; and he said he could not wait later than seven o'clock; at seven o'clock Tidd went to a box in the corner of the room, and took out a pistol, which he put into a belt round his body under a great coat, and then he took about six or eight heads of pikes, in a piece of brown paper, in his hand, and a staff four feet long which had a hole to receive a pike-head; he went down stairs into Holborn, and I along with him, and we went up Holborn, and going up Oxford-street, I asked him what we were going about? he said I should know when I got there; was it, I asked, to the House of Commons we were going; he said no, there were too many soldiers about there? he then told me we were going to Grosvenor-square; I asked who lived

there; he said there was to be a cabinet dinner there that evening; nothing more passed, and he then took me to Cato-street, through the gateway on the right hand into a stable; two people were standing under the gateway: he spoke to them; I went into the stable, there were three or four men there, and a light; he asked whether Mr. Thistlewood was up stairs, they told him he was; we went up stairs; there were one or two or three and twenty people, as near as I can tell, of whom Thistlewood was one; and on a bench there were a great many swords and pistols; Tidd went up stairs, and when up stairs a man in a great coat spoke of the impropriety of going with so small a party to lord Harrowby's. Thistlewood said it was quite sufficient, for if lord Harrowby had sixteen servants, fourteen of our men would be quite enough to go into the room. The man then said, what shall we do when we come out of the room, as there would be people in the street, who might prevent our escape; to which Thistlewood answered, this is the smallest body, there is another and a larger body, the largest is already away. Davidson then told the man not to throw cold water upon their proceedings, for if he was afraid of his life, they could do without him, and he might go. Brunt then said, sooner than leave the business, he would go into the room alone and blow them all up; he said you know we have got that which can do it, or to that effect; the man then said he did not like going with so small a number, but as they were all for it, he would not be against it; he then proposed that they should put themselves under the orders of Thistlewood; when Thistlewood said every one engaged in the business would have the same honour with himself; and he then proposed that the fourteen men to go into the room should volunteer from among the persons that were in the room; a few minutes afterwards, twelve or thirteen out of the fourteen ranged themselves accordingly on the other side of the room; one (Tidd) came first and spoke to me, on which Thistlewood put him back, and said, you all know your places; I do not recollect any thing particular passing after that until the officers came into the room, which was about five minutes." This brings us to that part of the transaction, which introduces the police officers first into the stable, and afterwards up into the loft. He says, "there seemed first to be two or three, they got up stairs before these in the room knew it; they told them in the room that they were officers, and called upon them to surrender, telling them that there was a guard of soldiers below; I was taken into custody in the room and I have been in confinement ever since."

On cross-examination, he says, "fear led me there; Brunt at my house said, that every man who engaged in it and did not come forward, should be destroyed; I was foolish, but I cannot charge myself with any crime; I was afraid there was something bad; I did not know why I suspected they were going to the

House of Commons. When he told me it was to a cabinet dinner, I asked no further questions, because I was certain what it was; I could not see that they could be going for any thing but to destroy the persons so assembled at dinner; I had not been at their private meetings; I saw Thistlewood at Ford's about a week before the Finsbury meeting, and this was after the Manchester meeting; and I went to Tidd's because I was afraid to express reluctance to go with them. When I found what they were about in the room, my intention was to get away from them, when Thistlewood or somebody told the man in the brown coat, that if he was afraid to join them, he might go away, I wished he had said so to me; I joined them from fear, and proceeded from fear. I did not know what their proceedings were at first; I admit that I certainly acted very foolishly."

This last witness, I have already told you, undoubtedly stands in the situation of an accomplice, about him therefore I say no more at present.

The witness who is now called is Thomas Monument. He says, "the last witness, John Monument, is my brother." Gentlemen you will attend to this; Thomas Monument is not one of the persons charged with this conspiracy, and therefore upon this part of the case, taking his brother as an accomplice, the point for your consideration will be, how far he is confirmed by this witness, whose testimony not being attacked may be assumed to be true. He says, "John Monument, the last witness, is my brother; I lived with him; Thistlewood called upon him at his lodgings, in company with Brunt; they remained in the room some time, I suppose ten minutes; and then Thistlewood asked my brother if he could speak to him; they went out-side the door." This witness therefore, not an accomplice, confirms the story told by his brother, who is, in all the particulars stated by John as to Thistlewood's coming there, calling his brother out to speak to him, of course about something that could not be disclosed before Thomas. "Brunt called upon my brother on Tuesday the 22nd of February, and brought a man of the name of Tidd with him, when they came into the room, my brother said, Brunt, I thought I had lost you; then something was said concerning the king's death; Brunt said, the king's death had made some alteration in their plans; my brother said, what plans? he said, they had different objects in view. Then Brunt said, suppose we give them an outline of the plan; and then Brunt said, that we were to meet up at Tyburn-turnpike on the following evening at six o'clock: he then gave the pass word;" and he repeats the pass word as other witnesses have done; "the next day, about five o'clock in the evening, Brunt came and asked my brother if he was ready to go; he could not go just then, for he had to finish some work, and he told him to call on Tidd and he would take him; my brother then went away

at near seven o'clock, and I never saw him after this till I saw him in custody." You will judge for yourselves on this part of the case, how far the testimony of Monument the accomplice engaged in the conspiracy, is or is not confirmed in all its particulars by the testimony of his brother who speaks to these facts, who never went near Cato-street, and who is in no way connected with these transactions.

George Caylock is the next witness, who says, "I live at No. 2, Cato-street; on the 23rd of February I saw Harrison, one of the prisoners at the bar, in Cato-street; he was going into the stable; I asked him how he did and what he was going there for? He said he had taken two chambers and was going to clean them up."

The next witness is the first of the police officers who went to Cato-street, George Thomas Joseph Ruthven. He went to the spot about six o'clock, and he entered the stable at about half-past eight. "On going in, I observed a man walking backwards and forwards with a gun on his shoulder; I did not observe him particularly; there were others with me; I said to them, secure that man, and I went up stairs first myself; next came Ellis, and then Smithers, and Gibbs as I have been since told, but I did not see him. On getting into the loft, I observed several men standing round a carpenter's bench; there were about twenty-four or twenty-five round the bench. I heard a clattering of arms, and saw some persons apparently sorting them. I said, We are officers; seize their arms. Thistlewood looked up, caught up a sword, and retired, with three or four others, into a little room to the right of the bench; two or three men went also into the back apartment. I know Thistlewood well; have known him from the time of the state trials, two or three years ago. Smithers then appeared on my right hand, he approached the door where Thistlewood had retired, on which Thistlewood stabbed him with a sword; he had been fencing with the sword before, and a pistol was fired almost instantly, on which the lights were put out. I then heard a voice, kill the b——rs! throw them down stairs. On this there was a rush towards the staircase; I joined in it, and got down stairs; there was no light in the stable when I got down. I got into John-street, and there I met the soldiers. I returned to the stable, and I saw Tidd coming out of the door; I called to somebody following me to lay hold of him; and immediately upon that he lifted his arm, and I saw a pistol; I pulled him on me, and we fell upon a dung-heap; the soldiers came up, and serjeant Legg extricated me, and I took Tidd to the Horse and Groom. I searched him; I found two ball-cartridges in his breeches pocket, and a belt round his waist. Bradburn was brought in while I was there; I searched him, and I found six ball-cartridges and three loose balls, and round his waist was a string, five or six times round, that would have answered the

purpose of holding a pistol. Davidson was also brought in, and he began to sing, Scots wha ha wi Wallace bled; and he said, damn any man that would not die in liberty's cause; he gloried in it. Wilson was brought in, but I did not search him. After this I returned to the loft and found there several soldiers, four prisoners, and some police officers in the room. When Smithers received the thrust with the sword he fell backward, and cried, Oh my God! or, Oh I am done! I do not know which, and died directly. I found arms on returning to the loft;" then he produced the list of all the things that were found in the loft, together with another list of arms, ammunition, and accoutrements; of all of which you have heard so much and seen them displayed, and which were found not only in the loft, but a part at Brunt's, and a part at what is called the dépôt at Tidd's. "Tidd fired a pistol when he was lying upon me. Wilson, when in the Horse and Groom, said he did not care a damn; he knew it was all over; they might as well kill him now as at any other time. Before I went to the stable I went to the Horse and Groom; while I was there, Cooper and Gilchrist came in; after they went out Gilchrist came back for a stick, one end was cut round, as if to receive the socket of any thing. I think there were about eight lights in the two rooms; four or five in the first room of the loft. I could see them; I have no doubt there were four or five. I said, we are officers; seize their arms. Smithers said nothing more than, let me come forward; and when he received the blow he fell back, crying, Oh my God!"

James Ellis is the next witness called; he says, "I was one of the conductors of the Bow-street patrol on Wednesday, the 23rd of February. I went with other officers, and entered the stable close to Ruthven; there was a light in the stable; two men were there. The first I observed was standing about half-way between the door and the foot of the ladder. I believe it was Davidson; he had a short gun or carbine in his hand; he carried it so"—[the witness pointed out how] "and at his left hand side a long sword and two white cross belts. I took him by the collar, and turned him half round; I looked in his face, and saw that he was a man of colour, upon which I desired some of the officers to secure him, and left him. There was another man near the foot of the ladder in the further stall of the stable; he appeared to be a shorter man, he had a dark-coloured coat. I took little notice of him. I followed Ruthven up the ladder, and heard what I understood to be a signal to those above. Smithers followed me; I ascended the ladder, and I heard immediately a rattling of swords when we got up. Ruthven called out, that we were officers, seize or surrender your arms, I am not positive which; there were candles in the loft, three or more, and lights in the little room besides. The lights were placed on a carpenter's bench, which stood across the room. On getting into

the loft at the top of the ladder, I saw a number of men falling back, placing themselves against the back of the loft. I saw Thistlewood and two or three more between the carpenter's bench and the door of the little room. On my gaining the top of the ladder, he shook his sword in this manner at me, as if to make a stab. I desired him to desist, or I would fire. I had a pistol in my right hand, and a constable's staff in my left hand, which I held up so. Thistlewood retreated, backing into the little room; and at that moment, having gained the top of the ladder, Smithers rushed forward to enter the door of the little room; and the moment he was in, Thistlewood stabbed him in the right breast. Smithers held up his hands. I saw him fall back, and heard him exclaim, Oh my God! and falling almost immediately, he staggered past me, and rose no more. I fired at Thistlewood; the lights were put out the moment I fired; the flash of my own pistol was the last light I saw. Great confusion immediately took place; there was a rush by me; I was thrown down the ladder; several shots were fired in the loft while I was on the ladder; two or three shots were fired, when I found myself in the stable; two passed me at the door. I cannot tell exactly from where fired. Another shot was fired in the stable by a man who stood there. There were some shots from the window of the little room, which looks into Cato-street. While at the door, I heard a cry of, Stop him! and observed a man running away towards Cato-street; he had two white cross belts. I pursued him, and caught him in Cato-street; it was Davidson. On laying hold of him, he made a cut, intended for me, with a sword; others came up, he was secured. I left him with an officer, and returned to the stable, where I found lieutenant Fitzclarence and the soldiers; four men were in the loft in custody of the soldiers; of these Monument was one and Wilson another; they were all taken to Bow-street, and finally committed."

The next witness is William Westcoatt, who went with Ruthven and the others, but not up into the loft. He says, "when they had gone up I heard a noise of firing and confusion"—and then this witness tells you, and to which you will particularly advert—that he, remaining below, observed Ings in the stable, who rushed towards him, the witness, as if endeavouring to get out of the stable. He says, "I seized him by the collar, and shoved him back against the wall at the foot of the ladder; he put his hand to his side as if to get out a weapon; I knocked him down; at this time the officers came tumbling down the ladder. I heard a firing above; I saw the flash of a pistol from the ladder after they had come down; it appeared to have been fired into the stable; then a man came down the ladder who appeared to have fired the pistol; it was Thistlewood; he turned round and presented a pistol at my head; it went off. I had before lifted up my left hand, it passed through the

sleeve of my coat; and while he was doing this" that is lifting up and presenting the pistol, "I let go of Ings whom I was holding before it wounded me, and there were three holes in my hat; I received then a violent blow on the right side of my head, and I fell; as I fell, Thistlewood made a cut at me with a sword, and rushed out at the stable door."

The next witness is Luke Nixon, also a Bow-street patrol, who went with the other officers; he says, "I saw Westcott in conflict with Ings, in the stable; I saw Ings leave the stable; I made a snatch at him to catch him, but missed him; I do not think Thistlewood had got away then; Ings got out, and I ran after him up John-street, but he had got too far; on this I heard a pistol fired, and going up I found him in the custody of Brooks and Champion."

Joseph Champion is next called, he also is one of the Bow-street patrol; he says, "I followed Rathven to the foot of the ladder; I was about the sixth or seventh man behind him; I was at the foot of the ladder when he was at the top; I saw Ings at the bottom;" this is the second witness who speaks of him by name; as to the former officer, you will judge whether he identifies him or not by description; he says, "I saw Ings at the foot of the ladder; he looked up, and cried out, look out above; Westcott endeavoured to seize him, but he made his escape. I followed him, and laid hold of him just after Brooks had laid hold of him; we took him to the watch-house, and we searched him, and on his person we found four pistol-balls, the key of a pistol, a case of blue cloth for a large knife, which fitted the butcher's knife produced here, and which had wax-end twisted round the handle; I took off his great coat, and then under this, about his person, there were two haversacks slung, over his shoulders; I saw in one of them a tin case, with loose gunpowder, nearly full; he had a cloth belt round his waist with pistol holsters."

John Wright was also one of the Bow-street patrol; he was there on the 23rd of February, and saw a man in the further stall, and says, "I took a knife and sword from him; it was a butcher's knife, with a wax-end tied round the handle of it; the sword was about three feet long; I took these from a man at the foot of the ladder, in size like the prisoner at the bar;" and who is proved by the other two witnesses to have been by name Ings the prisoner; he says, "I was knocked down, and received a stab on my side; when I recovered he was gone."

Brooks is then called, who was also a patrol; and he tells you, "when I was in John-street, I saw Ings running up the street; I crossed the street, and found one of my partners with a cutlass; I went up, and the prisoner presented a pistol and said he would shoot me, and fired; the ball struck me, and went through my collar and the shoulder of my waistcoat, and out at the back of my neck;

it staggered me to the right, and then (I suppose, meaning to avoid the pursuit of my companion, who was following him) he came into the Edgeware-road and threw the pistol away; a little further on, there was a watchman of the name of Mosey, who laid hold of him just as I did; I never lost sight of him till he was taken; I said, when taken, you rascal, why did you fire at me, a man you had never seen before; he said to kill you, and I wish that I had done it; and this he repeated afterwards to the soldiers, and to my partners."

William Lee is also a Bow-street patrol, and he says, "I went to the Horse and Green in the evening, before the officers went to the stable; I saw Cooper and Gilchrist go in there; they were taken that night and conveyed to Bow-street."

The next witness was lieutenant Fitzclarence; he says, that he is a lieutenant in the Coldstream-guards; that he was applied to on the night in question, to go to Cato-street; that he took a picquet with him, and arrived there a few minutes after eight; he entered the stable three or four minutes after eight: going under the gateway, leading into Cato-street, I saw a police officer, who cried out, Soldiers! soldiers! stable-door! He says, that he saw two or three persons in the stable—"I was met by two men, one presented a pistol at me; I am not sure that it was a pistol, but he presented something at me, which appeared to me to be a pistol; at the same time a man with a sword struck at me, which I parried. Seeing a body of soldiers coming up, he ran into the stable; I followed him, and the moment I got into the stable, I ran up against a man who surrendered himself, saying, do not kill me, and I will tell you all; I gave him over to the soldiers. I then ran forward into the stable; I went up into one of the stalls, and took a man out, whom I also delivered to the soldiers;" and then in the very gallant and proper discharge of his duty—considering the firing that was going on, the time of night, the obscurity of the place, and the danger with which it was attended—he goes up this narrow ladder, on which there was only room for one at a time. He says, "I led the soldiers, and when I got into the loft, I fell over the legs of poor Smithers. By the light in ascending the steps, I saw three or four men in the room; I secured these also; then I went on, and there was a large quantity of arms in different places of the loft; blunderbusses, swords, pistols, pikes, and the arms were packed up and seized by the different soldiers who took them away."

The next witness called, is Serjeant William Legg, who is a serjeant of the second battalion of the Coldstream-guards, and went with captain Fitzclarence, who directed the party. He says, the moment the police officers had spoken to him, the party were directed to advance in double quick time. "Just before," he says, "we had heard the report of pistols; there was a man standing with his back against

the door; he had a pistol, and he levelled it against captain Fitz-clarence; but it was turned away by my pike. I then seized the pistol with my left hand, and a scuffle ensued between the prisoner and me; that prisoner was Tidd. After some time, we both having hold of the pistol, it went off, and tore a hole in my coat; I delivered Tidd to one of the police; the pistol is here; on going up into the loft I saw three others who had surrendered."

The next witness called is Samuel Hercules Taunton, who says, "I belong to the police-office at Bow-street. On Thursday morning, the 24th of February, I went to Brunt's lodgings, where I saw Brunt and apprehended him; I searched the apartments occupied by him, but found nothing in the front room; I then went into the back room, where I found two rush baskets, both packed up, one tied up in a blue apron; and having seized Brunt, I asked him about them, and he said he knew nothing of them. I brought the baskets out, and I opened them afterwards; and I found in them nine papers of rope-yarn and tar, and other ingredients calculated to take fire; and also steel-filings. In one of the baskets there were four hand-grenades; three papers of rope-yarn, tar, and other ingredients; two bags, containing each one pound of gun-powder; five flannel bags empty; one leather bag containing sixty-three bullets. In the room there was an iron pot, which appeared to have had tar boiled in it very recently, and a pike handle finished in rough; this was what I found at Brunt's. I afterwards went to Tidd's, about nine in the morning, and searched his lodgings, where I found 434 balls in a haversack; 171 ball-cartridges, loose; 69 ball-cartridges, without powder; three pounds of gun-powder, in a brown paper; 10 grenades; 11 bags of gunpowder, one pound each," these are the flannel bags; "and 10 flannel bags, empty; and there was a small linen bag with powder; a powder flask with some powder in it; 68 bullets, four flints, and 27 pike-handles with sockets at the ends for pikes; and a box which contained 965 ball-cartridges. This is all I found at Tidd's."

He was asked, upon his cross-examination, about Palin; whether there is a reward offered for him? he says there is; that he has observed that he is advertized for the part he took in this business.

Daniel Bishop is the next witness called, and says he apprehended Thistlewood between ten and eleven in the forenoon of the 24th of February, at No. 8, White-street, Little Moor-fields, in the apartments of a Mrs. Harris; his own abode, he says, being in Stanhope-street, Clare-market. He says he was in bed with his breeches and stockings on. "Upon my opening the door, he just held up his head from under the bed-clothes; I had a pistol in one hand and a staff in the other. I told him who I was, my name, and that I had a warrant against him; he said, I shall make no resistance. His coat and waistcoat were by the

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bed-side; in his waistcoat pocket there were three leaden balls, a ball-cartridge, a blank-cartridge, and two flints, and a small silk sash. I took him into custody."

On the cross-examination he says, "I do not know Edwards."

Ruthven was then called back, and he produced the arms taken from Cato-street.

Morison was called back, and identified a sword found there as the one brought to him to be sharpened, by Ings. He says, that it "was directed to be made particularly sharp at the point, both back and edge, as sharp as a needle; it appears to have been rubbed on a stone to keep the keenness of the edge."

Taunton is next called back, and he produces the arms found at Brunt's. He says, "this basket contains nine papers of rope-yarn, tar, and other ingredients; there are also some steel filings." Then he produces the basket which was tied up in a blue apron, and says, "these are flannel bags full of gun-powder; there are also some empty; there are four hand-grenades; a pike-handle, filed at the end so as to receive a pike, and it has a ferule on; this is the iron pot, there is the appearance of tar at the bottom; these are the sixty-three bullets in a leathern bag." Then he produces the things found at Tidd's, and, looking at them, he says, "These are some of the ball-cartridges; three pounds of gunpowder, some hand-grenades, eleven bags of gunpowder, of a pound each, some empty bags;" and he produces the various things found there.

Then Ruthven is called back, and he proves that those arms found in Cato-street were most of them loaded, one or two had been fired off; the others were drawn last Monday.

Then Serjeant Hanson is called; he is in the Royal Artillery, and he looks at the fire-balls; he says, they are composed of oakum, tar, and rosin; and if they were lighted and thrown into a house they would set the house on fire; if into a hay-loft, still more likely. He says, looking at the fuse, it would burn about half a minute; and, looking at the thing itself, he says, this one would burn three or four minutes; and then looking at one of the cartridges (and this part of the evidence is very material) so seized at this dépôt, he says, "this is a flannel cartridge for a six-pounder, powder is so made up for the purpose of charging cannon; but ours are not made up in the same way, for they are serge; this will answer the purpose." Then he looked at the hand-grenades, he took one to pieces; and then he says, that the exterior tight binding, as they appear to you to be, increases the effect when they burst; if they were slack they would not have half the effect; and then he pointed out to you, before they were taken to pieces, the great nails in different situations, which in a thing likely to explode with this violence, would, like a shower of shot, be scattered in all directions, and be productive of infinite mischief; and then he says, this is more powder than we use to burst a nine-inch shell.

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This is the whole of the evidence for the prosecution which I have felt it my duty in this case, so important to the prisoner at the bar, to state to you.

On the part of the prisoner, the first witness called was Thomas Chambers; who says, that he lives at No. 3, Heath-cock-court, in the Strand, nearly opposite the Adelphi. He is called to impeach the character and the testimony which was given by the witness Adams; and he says, "I had seen Adams in company with Edwards about a week before the Cato-street business took place; I was by myself in my room when they came together; they made a proposal to me about the assassination of the king's ministers, and asked me to go with them; I refused; Adams said to me they were going to kill his majesty's ministers, and they would have blood and wine for supper; they came to me again on the Monday-night, (it was a wet night) before the Cato-street business; they brought a large bag and wanted to leave it. I am a boot-maker; I cannot say how long I have known Ings; I have not been in his company above two or three times. I met him near the court where I live, at a pamphlet shop, where they sell the Black Dwarf and the Medusa; the shop is kept by Watling; I know the Scotch Arms in Round-court, in the Strand; it is near my lodgings; I never saw Ings there; I had been there three times before Christmas; there was no business going on, nor any chairman; the three times I was there, I was in the tap-room; I have been at the Black Dog in Gray's-inn-lane; there was no chair there, it was in a little parlour, and I saw seven persons there; I was invited there by a man of the name of Bryant, who was going to the Cape of Good Hope; they were all strangers to me but one, and that one whom I knew was Thistlewood; I know Brunt very well, but he was not there; I will not swear I do not know Palin; I have not had any conversation with him, but I may have seen him; I was at all the meetings in Smithfield; I cannot state who carried the black flag upon that occasion, but I have carried two flags; there was inscribed on one, 'The Manchester Massacre;' never saw a flag, 'Let us die like Free men, not live like Slaves.'" On Hunt's entry, I carried a flag of 'Trial by Jury;' I know Davidson; I have not much knowledge of Tidd, I may have seen him; I have seen Wilson; I know Harrison very well; I have not much knowledge of Braddurn; I do not know Strange, nor Gilchrist, nor Cooper; I have known Thistlewood since Mr. Hunt's triumphal entry; the proposal of assassination shocked me so, that I did not go; Bow-street was near me, but I did not myself go to Bow-street and give any information; I do not know whether Edwards knew of my acquaintance with the other people."

Then the next witness who is called, is Mary Barker, the daughter of Tidd. She says, some powder was found at his house, and some grenades and balls; "they were brought

in the morning by a man and a boy; I know Edwards; he brought some of the grenades, Edwards was the man; they were taken away and returned; I saw Edwards on the morning of the 23rd, he came and took some of the grenades and powder away; they might be the same that were brought back on the 24th, but I do not know; there was one very large one; Adams brought it; that was not brought back again."

Upon cross-examination she says, "the box had been there two or three days; I do not know how long the grenades had been there they might have been there a fortnight; it was on the morning of Wednesday that they were taken away; the box was kept corded, it had not been opened to my knowledge."

This is the evidence on the one side, and on the other; and it is for you to say whether, upon this evidence, the prisoner at the bar be or be not guilty of the criminality imputed to him by this indictment; one of the charges being a conspiracy to depose the king, and the other a conspiracy to levy war against the king; such as I have before stated.

You have been truly told, that the nature of this offence consists in the intention; and the intentions charged are those which I have pointed out. The overt acts themselves are but manifestations of the inward intent, and if such overt acts as are stated are established by the evidence, there can be no doubt that, in point of law, the prisoner is guilty.

Now first, with respect to the purpose—I must be a public purpose: and the purpose charged is an intention to bring about a revolution in the government, to compel the king to change his measures, and to put many of those employed in the administration of the government to death, by the means that have been stated and proved. But still, if this were merely an intention to assassinate the king's ministers, and that such assassination should end with itself, however diabolical such a design would be, still having no ulterior public view, it would not be the offence imputed; but it will be for you to judge on the facts in proof, what were the motives, and what the end and object of the conspiracy in question.

To begin with the evidence of Adams. If you believe him, there can be no possible doubt in the case; for he proves the origin and progress of different meetings, from time to time, at which this scheme was formed and matured, up to the moment when it was preparing to be carried into execution. But you have been told, and truly, that Adams is an accomplice; that he is a man, upon his own confession, as guilty as those against whom he appears to give evidence; and so undoubtedly he must be taken to be. But it is not to be expected in cases of this sort that an accomplice can ever be an innocent person: the very nature of his situation imports, that he himself is connected in guilt with those whom he stands forward to accuse; and if the doctrines which we have heard this day could be adopted, it would

never be possible to call an accomplice, because his testimony would be got rid of by the single observation that he was an accomplice, that is, a guilty man himself. At the same time you have been truly told, that though in point of law an accomplice is a witness competent to be received, and therefore one who in point of law it is competent to a jury to believe, yet in the practical application of the rule, juries ought not to convict upon the testimony of an accomplice, unless his testimony receives proper and reasonable confirmation. Upon this part of the case, I have heard the law not intentionally but grossly mis-stated; the rule is, that an accomplice must be confirmed—confirmed in some particulars, but not confirmed in all; for you have been truly told, that if this last were the rule, it would be unnecessary to call an accomplice; because if the other persons could confirm him in all, by proving the same facts themselves, their evidence would supersede the necessity of his evidence, and therefore it is not necessary to confirm an accomplice in all particulars, the rule being, that it is necessary only to confirm him to such an extent as that upon the facts stated by other witnesses, the jury may see that he is worthy of belief. Now is this, or is it not, the case of Adams?

Gentlemen, to take first the testimony of the three witnesses, to whom I have referred—the maid servant who let the lodgings—Mrs. Rogers, to whom the house belonged—and Hale, who was the apprentice of Brunt. What is proved by all these three witnesses? You will judge, whether it be or be not the strongest possible confirmation of the evidence of an accomplice, which perhaps it is capable of receiving. Adams had told you that a back room was taken in Fox-court, Gray's-inn-lane; that it was taken by Brunt for Ings, who was described to be a butcher out of employ; and it is distinctly proved—confirming in that particular every part of Adams's testimony—that the room was taken for Ings, that the meetings were held in this room, that he continued there up to the night of the meeting in Cat-street, that he never returned there after that night, and that Brunt, another of the party, went out at the same time, returned the same evening, and conducted himself in the manner you have heard. All these essential and leading features of Adams's evidence, are confirmed by the testimony of these accredited witnesses. And not only this, but on that very evening you find that Brunt came home, and told his wife that it was all up; that the police officers had found their way into the loft; that he himself had escaped only with his life; and then, shortly after, came in another man, who also had been present, and who stated, he had received a blow. The apprentice, Hale, upon whose character no imputation is attempted to be cast, proves the poles, the bags, pikes, and pistols—all these deadly preparations going on from time to time in the apartment of Ings, in the house from which Ings and Brunt sallied forth

on the night in question. Ings never did return to it; and Brunt returned and behaved himself in this way. The next morning the officers found Brunt packing into two baskets, to be conveyed away, all the different arms and ammunition, which have been produced before you; therefore, if the case rested upon the testimony of Adams only, is this such confirmation of the truth of the story told to you by him, as to make him a witness worthy of your belief? So I state the question, leaving it to you to answer it to yourselves.

Independent of this, there is the testimony of Monument, with regard to whom, if it rested merely on his testimony, it might be said, that one accomplice cannot be confirmed by another; but unfortunately it does not, for his brother, who is not implicated, proves Thistlewood and Brunt coming to the house. He confirms every part of the testimony of Adams as to this part of the case; and in addition to this, you have the evidence of another witness, and that a person who stands in a very different situation—the evidence of Hiden. He, up to a certain time, had engaged in the transaction in question; but such was his remorse of conscience, so completely did he sicken in mind as this night approached, that you find that before the parties assembled in Cat-street, he did that which he could not have done unless, as I stated before, he had possessed the spirit of prophecy;—he actually, in order to prevent the mischief intended, went to lord Castlereagh's, and afterwards to lord Harrowby's, and delivered the letter, a forewarning to prevent what would otherwise have taken place. Whether he be, therefore, an accomplice up to a certain stage, or not, it is immaterial to examine; he was not an accomplice at the time he did that, which tended to defeat the plan proposed.

Nor does it rest on the testimony of Adams so confirmed, or Monument so confirmed, or the fact of the delivery of the letter, but you will judge whether this story is not also confirmed by all that took place on the night in question in Cat-street. There you find, assembled in the stable and in a room spread over with arms—a hay-loft I might almost say converted into an arsenal—a number, and of the number was Ings the prisoner, of persons drawn up, as it were in military array, on the point of sallying forth, he was seized—he escaped; he was pursued—he turned round and fired a pistol; and on being asked by one of the officers, what he meant by shooting at him an innocent man, he said, to kill you, and I wish I had done it—I am sorry to add, but it is my painful duty to draw your attention to the evidence, that a sword was taken from a man not known at the moment by the person who took it to be Ings, but proved to be him by two other witnesses; and when he was seized, there was found on his person a sheath or case fitted to the knife of which you have heard, and under his coat and over his shoulders were found those two bags of which Adams had

spoken; the bags in which the avowed intention was to carry away the heads of some of the murdered party.

Now this is truly, in all its circumstances, a case of a most extraordinary nature. It is admitted, that all these persons were met (not it is argued for a treasonable purpose) but with an intention to proceed to a cabinet dinner, to assassinate all the ministers assembled there; to what motive can this be referred? Was it private malice? Was it personal revenge merely? The lots of the prisoners at the bar were cast too widely asunder from those of the objects of their vengeance, to permit us to account for their plan on any grounds of private or personal difference. Is it possible to suppose, that the object was to commit a murder merely, and stop there? Of this you will judge, looking to the nature of the preparations made; not merely daggers concealed, but long staves for pikes; not merely cartridges for pistols; but cartridges of a size to charge artillery; grenades sufficiently strong in their construction, to be equal to the power of a nine-inch shell—the number of arms—the quantity of ammunition—the military dépôt—the fire balls, and the surveys made.—Connecting this with what relates to the Mansion-house and the Bank—the provisional government—and the expectation that the people would rise and join—it is for you, gentlemen, to judge, whether this was merely to lead to and end in the assassination of the king's ministers; or, whether there was not an ulterior purpose of insurrection and revolution, to which the assassination was but preparatory and subervient.

But it has been said, is it probable that persons comparatively so few in number should suppose themselves able to accomplish such a mighty purpose as to bring about a revolution in the government of the country? I cannot tell what in their estimation might be probable; but this is a most uncertain test by which to judge; for if I had been told there could be found five-and-twenty men on the face of the earth, and still more (and I grieve to say) five-and-twenty men of the country to which we have the happiness to belong, who could have combined to commit such a dreadful deed of barbarity and blood, I should have said, till they had been detected in the way in which these persons have been

detected, it is utterly impossible! It never did happen—it never can! I cannot believe on any testimony that it is intended. But how fallacious would have been such reasoning is proved too clearly by the fact! And the fact established, the next step I fear is of no difficulty whatever. For that public revolution could only have been intended by such means, is as difficult to disbelieve as it was difficult to believe in the means till established. Besides, upon the evidence, it will be for you to say, whether extensive co-operation was not the support and consequence to what they looked, as proved expressly not only by the measures but by the different declarations given in evidence.

The prisoner has called witnesses to impeach the testimony of Adams, of whose evidence you will judge. You have heard his defence, which I need not repeat to you, and in which he has desired you, before you dispose of his case, fully to examine all the circumstances, and well to weigh the verdict you may pronounce. In that prayer I most readily join. Weigh well the evidence! Deliberate thoroughly on the result! And if in conclusion you can have any doubt of the facts which constitute the overt acts charged, or the purpose alleged as connected with them; if you think that, however horrible, this was an intended assassination, and nothing more; that the conspirators were to go into the house, commit the murder, and then separate, and that with that separation all operations were to cease—if this should be your opinion—in the honest exercise of your judgment apply it to the case, and acquit the prisoner. But, on the other hand, if it be impossible fairly to form such a judgment, then you will perform that duty which in the name of that Being referred to more than once in the course of these proceedings, you have been sworn well and truly to discharge, and pronounce the prisoner guilty because you believe him to be so. Finally, if you have any doubt, give him the benefit of it, and nobody will rejoice more than I shall, if you can, with satisfaction to your consciences, pronounce him not guilty.

The Jury withdrew at twenty-five minutes past eight, and returned in twenty-five minutes, finding the prisoner GUILTY on the first and third counts.

704. The whole Proceedings on the Trial of JOHN THOMAS BRUNT, for High Treason, before the Court holden under a Special Commission, for the Trial of certain Offences therein mentioned, on the 24th and 25th days of April: 1 Geo. IV. A. D. 1820.*

SESSIONS HOUSE, OLD BAILEY,

MONDAY, APRIL 24th, 1820.

Present

The Right Hon. *Lord Chief Baron* [Richards.]
The Hon. Mr. *Baron Garrow*.
The Hon. Mr. *Justice Richardson*.
The *Common Sergeant*,
And others his Majesty's Justices, &c.

[The Prisoner was set to the Bar.]

The Jury Panel was called over, commencing with No. 219.

Richard Emery, cooper, challenged by the Crown.

Stephen Gaurd, bricklayer, challenged by the Crown.

John Apple, drug-grinder, excused on account of illness.

Thomas Brayne, mason, challenged by the prisoner.

William Butler Baker, challenged by the Crown.

William Benn, farmer, challenged by the Crown.

John Roper, gentleman, fined for non-attendance.

William Norton, sawyer, challenged by the prisoner.

William Blason, gentleman, challenged by the Crown.

Alexander Barclay, gentleman, and grocer.

Mr. *Barclay*.—My lord, I feel so completely influenced by the facts that came before me on the former trial,† that I really do not feel myself a competent judge.

Lord Chief Baron.—It is no objection unless the parties object.

Mr. *Curwood*.—We prefer him, my lord, because he will be able to see the difference.

Mr. *Barclay*.—I trust I may be exempt under these circumstances.

Mr. *Justice Richardson*.—It is no objection in point of law.

* See the preceding and following Cases.

† He was one of the Jury on the trial of Arthur Thistlewood.

Mr. *Barclay* was sworn.

Edward Hughes, gentleman, excused on account of illness.

Edward Grant, cow-keeper, excused on account of illness.

Thomas Lester, bookseller, challenged by the Crown.

Joseph Sheffield, esq. and ironmonger, challenged by the prisoner.

Thomas Goodchild, esq. sworn.

Joseph Haynes, bricklayer, challenged by the Crown.

Robert Stephenson, anchormith, challenged by the Crown.

Mr. *Stephenson*.—I am sorry to be under the necessity of appealing to your lordship, but I should think, having been challenged twice* I may claim a right to withdraw altogether.

Lord Chief Baron.—Certainly not.

Mr. *Stephenson*.—I have always applied myself strictly to do my duty, as I have been taught from my infancy, but I conceive I am trifled with.

Mr. *Solicitor-General*.—It is no reproach to any gentleman that he is challenged, either on the one side or the other, and ought not to be so considered.

Lord Chief Baron.—No, certainly not.

Richard Blunt, gentleman, challenged by the prisoner.

Isaac Gunn, baker, challenged by the Crown.

William Churchill, gentleman, and wine-merchant, challenged by the Crown.

Thomas Suffield Aldersey, esquire, sworn.

Thomas Wilkinson, farmer, challenged by the prisoner.

Samuel Fish, tobacconist, challenged by the prisoner.

Edmund Collingridge, water-gilder, challenged by the Crown.

William Shore, farmer, challenged by the Crown.

James Herbert, carpenter, sworn.

John Slater, gentleman, sworn.

Josiah Bartholomew, watchmaker, challenged by the prisoner.

* Now, and in the case of Arthur Thistlewood.

John Jones, carpenter, challenged by the Crown.
Henry Ramsey, boat-builder, excused on account of illness.

Thomas Bristow, coachmaker, challenged by the prisoner.

Samuel Granger, lighterman, challenged by the prisoner.

George Dickenson, builder, challenged by the prisoner.

Thomas Parkinson, upholsterer, challenged by the prisoner.

Thomas Ashton, esq. and ship-chandler, challenged by the prisoner.

James Wilmot, market-gardener, sworn.

George Phillips, jeweller, challenged by the prisoner.

Thomas Bird, distiller, challenged by the prisoner.

William Johnson, baker, challenged by the Crown.

John Edward Shephard, gentleman, sworn.

Samuel Gould, calico-printer, challenged by the Crown.

James Wadmore, esq. challenged by the prisoner.

Thomas Brown, oilman, challenged by the prisoner.

George Allen, brass-founder, challenged by the prisoner.

William Reed, esq. challenged by the prisoner.

George Davis, cooper, challenged by the prisoner.

John Farnell, brewer, challenged by the prisoner.

John Westbrook, brick-maker, fined for non-attendance, but the fine afterwards remitted on proof of illness.

Jonathan Passingham, farmer, challenged by the Crown.

Joseph Drake, draper, challenged by the prisoner.

Joseph Clements, market-gardener, excused on account of illness.

John Fowler, iron-plate worker, sworn.

Samuel Rhodes, esq. and cow-keeper, challenged by the prisoner.

William Gibbs Roberts, cooper, sworn.

Richard Smith, esq. challenged by the Crown.

Joseph Pendered, iron-plate worker, challenged by the Crown.

Thomas Garrett, shipwright, challenged by the Crown.

Matthew Ashton, coach-master, challenged by the prisoner.

Richard Hatchett, esq. and farmer, challenged by the prisoner.

John Dickenson, builder, sworn.

William Bushby, esq. fined for non-attendance.

Thomas Austin, esq. excused on account of illness.

John Dolan, esq. challenged by the prisoner.

Thomas Dicks, silversmith, challenged by the Crown.

Thomas Wood, painter, challenged by the prisoner.

James Gates, joiner, challenged by the Crown.

Robert Wells, farmer, challenged by the Crown.

Edward Bracebridge, watchmaker, challenged by the Crown.

John Jones, stock-broker, challenged by the Crown.

Thomas Partridge, farmer, challenged by the prisoner.

George Henn, ship-chandler, challenged by the Crown.

Thomas Hardy, esq. and rope-maker, challenged by the prisoner.

William Jarrett, watch-engraver, challenged by the prisoner.

Samuel Wimbush, horse-dealer, fined for non-attendance.

John Bunting, gentleman and tailor, challenged by the Crown.

William Davies, farmer, challenged by the Crown.

William Cooper, gentleman, challenged by the prisoner.

Robert Greaves, gentleman, excused on account of illness.

Christopher Dawson, ship-builder, challenged by the Crown.

William James Farmer, baker, challenged by the prisoner.

David Newman, farmer, challenged by the Crown.

George Thorpe, clock-case maker, challenged by the Crown.

Henry Seaborn, cooper, excused on account of illness.

Francis Sheborn, esq. and farmer, challenged by the prisoner.

Edward Simpson, shipwright, challenged by the prisoner.

William Davies, shopkeeper, challenged by the Crown.

Richard Franks, esq. and silk-mercant, challenged by the Crown.

John Smith, undertaker, sworn.

Thomas Langley, ship-chandler, challenged by the Crown.

George Priest, esq. challenged by the prisoner.

Samuel Wilson, gentleman and merchant,

Mr. Curwood.—I have no cause to show, my challenges are exhausted.

Mr. Attorney General.—The prisoner shall not suffer inconvenience from that circumstance.

Challenged by the Crown.

Michael Atkins, esq., challenged by the Crown.

Alfred Batson, esq. and porter-dealer, challenged by the Crown.

George Taylor, bricklayer, challenged by the Crown.

John Woodward, gentleman, sworn.

THE JURY.

Alexander Barclay,

John Shephard,

Thomas Goodchild,

John Fowler,

Thos. Suffield Aldersey,

Wm. Gibbs Roberts,

James Herbert,

John Dickenson,

John Shuter,

John Smith,

James Wilmot,

John Woodward.

The Jury were charged with the prisoner in the usual form.

Mr. Attorney General.—Before Mr. Bolland opens the case, I think it my duty to bring before your lordships a circumstance which has occurred since you last sat in this place. The Court, from an anxious desire that nothing should occur during the course of these trials, which could by any means operate to the prejudice of the prisoners, at the commencement of the proceedings directed that no publication of the proceedings on the first or any other trial, should take place until the whole of them were brought to a conclusion. With that injunction, I believe I may state, that the daily papers have most properly complied; but it appears by the paper which has been put into my hands, that a publication was made yesterday in the Observer newspaper of the whole of the trial of Arthur Thistlewood, and not a very short account was given also of the trial of James Ings, and my lords, this publication has been issued with a full knowledge on the part of the publisher, of the prohibition which the Court had pronounced, for I find that prohibition published in this very paper which contains the account of the trials I have mentioned.

It is not my intention at this moment to interrupt the proceedings which are about to take place, by calling upon your lordships to take any specific step upon this most daring and flagrant contempt of the authority of the Court; but I think I owe it to the dignity of the Court, and to the situation which I hold, to state thus publicly, that this conduct cannot pass unnoticed; and that undoubtedly some proceedings will be taken, when the means are furnished to bring the matter in a proper shape before your lordships.*

Prisoner.—Would your lordship have the goodness to give me the indulgence of a seat, at intervals, when I am tired.

Lord Chief Baron.—Certainly.

THE Indictment was opened by Mr. Bolland.

Mr. Attorney General.—Gentlemen of the Jury;—You have heard, from the opening of the indictment by my learned friend, the nature of the charge which is preferred against the prisoner at the bar; and as the circumstances of this case, about to be laid before you in evidence, have already come to the knowledge of some of you from the duty you have lately performed, and may probably have reached the minds of the rest; let me, in the outset, beseech you to dismiss, as far as you can, all recollection of what you have heard or read upon the subject of this proceeding, and to confine your attention exclusively to the facts which will be adduced in evidence upon the present occasion. I am convinced that every one of you has anticipated me in this

request, and that therefore it is unnecessary, but in justice to the prisoner at the bar you will forgive me for having made it; and I am satisfied, that through the whole course of this trial, your minds will not be influenced by any thing but the evidence in the case, and that, upon that evidence alone your conclusion will be formed.

The charge against the prisoner at the bar is that of high treason; and without troubling you with stating the different counts of this indictment, I shall content myself by observing to you, that it is necessary by the law, that the acts intended to be given in evidence against the accused, shall be stated in the indictment. Those acts consist in consultations and deliberations by the prisoner at the bar, and others, to overturn the constitution of the country, to excite insurrection against the established government—in having actually prepared means for that purpose—and in having formed and acted upon an intention to assassinate all his majesty's ministers. Those statements are introduced into the indictment as indicating and evidencing the intention harboured in the mind of the prisoner at the bar and his associates, to depose the king from his royal authority, or to levy war against him, in order by force to compel him to change his measures and counsels; and I believe I may state with perfect confidence, that if these overt acts, as they are called, shall be proved to your satisfaction, they will establish the charge of high treason against the prisoner at the bar. I consider it, therefore, sufficient at present to request your attention to the nature of the evidence which will be laid before you, without troubling you further upon the law of the case.

The prisoner, John Thomas Brunt, was a shoemaker, residing in Fox-court near Gray's-inn-lane, and it will be proved by the witnesses, that early in the present year, plans (which probably had for a period long before existed in the mind of the prisoner at the bar, and the other persons who were associated with him), were more matured and brought nearer to the point of execution. One of his associates was a man who must frequently be mentioned in the course of this investigation, of the name of Thistlewood, a name probably not unknown to any of you, and it is a duty I owe to the prisoner to request that you will lay out of your consideration any thing which has occurred with respect to Thistlewood, and confine yourselves strictly to the proofs which will be laid before you in support of the particular charge you are now impanelled to try. Another person, included in the present indictment, James Ings, by trade a butcher, will also appear to you to have been an intimate of the prisoner Brunt. At the commencement of the present year, meetings were called by these three individuals, Thistlewood, Ings, and the prisoner, at which several other persons, who will be introduced to your notice in the course of this trial, were assembled. They

* See the commencement of the trial of Arthur Thistlewood, April 17th, *supra*; and the proceedings at the close of the present trial, *infra*.

were held at the White Hart in Brook's-market, not in the public house itself, but in a room in the yard belonging to it. It being thought however, for some reason or other, that this was not a secure place for their meetings, another room was obtained, in the house in Fox-court, in which the prisoner at the bar lived; and it will appear, that though hired for the ostensible purpose of being occupied by Ings as a lodging, it never was applied to that purpose, but was used exclusively for the meetings which the conspirators daily held, in order to consult upon their plans, and to prepare the means for carrying them into execution. This room was on the same floor with the apartments of the prisoner Brunt; his were in the front, that hired for Ings was at the back of the house; the key of it was kept at Brunt's, and access to it obtained by applying to him or some member of his family.

It will be in your recollection that at the close of the month of January, his late majesty died. It had been part of their plan to commence operations by the destruction of his majesty's ministers, and it was thought that no opportunity would be so convenient as that which the assembling of those distinguished persons at a cabinet dinner would afford. In consequence of his majesty's death, those dinners were suspended, and therefore no such opportunity was at that time likely to occur, at least the prisoner and his associates so believed; it was therefore proposed at one of their deliberations, that although the whole of their scheme could not be accomplished, some individuals of his majesty's ministry should be cut off either at their own houses, or at other places; and it was thought that the night of the king's funeral might be a convenient time for the commencement of their plan. It was observed by one of them, that the soldiers, or the greater part of them, would then be withdrawn from London to attend his majesty's funeral at Windsor, and that many of the police officers would be necessarily absent upon the same duty; and from these considerations it was proposed to the meeting, that that night should be fixed as the period for beginning the projected operations. This proposal, however, either was not adopted, or, if then agreed to, was not afterwards acted upon, and their operations were postponed beyond the evening of his majesty's funeral. At length the conspirators, heated and inflamed with the object which they had in view, became impatient; and you will find that on the 19th of February (a day to which your attention will be particularly directed), at a meeting at Brunt's room, at which Thistlewood, Ings, Brunt, Davidson, Harrison, and others were assembled, their impatience was exhibited. Many of them said, that they were resolved that a blow should be struck without delay, and that if no convenient opportunity occurred in the mean time, at which the whole of his majesty's ministers might at one blow be cut off, they were determined that something at all events should be attempted on

the evening of the following Wednesday. Thistlewood, acquiescing in this opinion, proposed, that upon the ensuing morning they should assemble again, and that a committee should then be appointed for the purpose of digesting the operations of Wednesday; and it will appear to you, that on Sunday the 20th of February, the party met more numerously than had been usual; twenty persons or more were, I believe, collected.

The plan of these conspirators embraced other objects besides the destruction of his majesty's ministers; different parties were to be posted in various parts of this metropolis; some were to set fire to buildings, which were to be pointed out; others were to seize the cannon deposited in Gray's-inn-lane at the Light-horse Volunteer stables, and in the Artillery-ground near Finsbury-square. It was intended, that after the taking of those cannon and the firing of different places in the metropolis, they should meet at the Mansion-house; which was to be the seat of what they termed the provisional government. This being settled and arranged on the Sunday, you will find that their activity increased to complete the preparations they had begun. Ammunition was procured in very large quantities; hand-grenades, which will be exhibited to you, were prepared; fire-balls, to which they gave the appellation of illumination balls, were made, to be lighted and thrown into the houses which were to be set on fire; cartridges for the cannon were obtained in considerable quantities; arms of every description—guns, blunderbusses, pistols, and swords—were collected. Other instruments which were found will be exhibited to you; they are pikes made of staves of ash and beech, into one end of each of which were to be screwed bayonets or sharpened files; thus connected together, the bayonet and the staff formed a very formidable weapon, of the length of eight or nine feet.

In order to their security, fearing that their motions at Brunt's room might be observed, they had appointed another place as a depository for the arms and ammunition which they had procured, and you will find that place was at the house of Tidd, who is another of the persons charged in this indictment, who lived in Hole-in-the-wall-passage, in Brook's-market. They met again on the following day, Monday, the 21st, when their plans were again considered, and they were still equally eager to complete them on the Wednesday; and you will find their deliberations turned again entirely on the mode in which their scheme was to be carried into effect.

On Tuesday the 22nd another meeting was held. At that meeting a man of the name of Adams, who will be called before you as a witness, communicated to them something which had occurred with respect to himself, and which excited a suspicion in his mind that their intentions were not altogether unknown to the government, and that their motions were watched. The very suspicion of

this excited great agitation in the minds of those who were present; they were so convinced of the fidelity of each other, so confident in the means which they had prepared, that they could not brook the notion that there was any possibility of failure. Such, at least, was the general impression upon the minds of the persons assembled there; but you will find that one of them, called Palin, who was to head a detachment for setting fire to the town, thought that the suggestion made by Adams ought not to be treated with inattention. Brunt proposed, in order to ascertain whether their scheme had been detected or not, that a watch should be set that night. Gentlemen, I ought previously to have stated to you, that upon the morning when this which I am relating to you, took place, it had been ascertained by the meeting, from a newspaper, that upon the following day a cabinet dinner was to be given by lord Harrowby; an event long anxiously wished for; an opportunity long desired by the prisoners, as by finding all his majesty's ministers assembled at one place, they hoped the more easily and the more effectually to perform their diabolical work of assassination. Brunt proposed that a watch should be set, and the spot fixed upon was lord Harrowby's house. Brunt said, "If our plan has been detected; if there be any ground for this suspicion which Adams entertains, no doubt there will be some preparation made at lord Harrowby's house, to meet the intended attack; and if, therefore, upon watching his house to-night and to-morrow morning, it shall appear that no soldiers are introduced into that house or any of the adjacent houses, that no preparations are made for the expected attempt, we may be quite satisfied that our plans remain undivulged, and that we are in perfect security." I will not repeat to you the expressions which were used at that meeting; the exultation which was displayed at finding that at last this opportunity they had been so long expecting would occur, and that at last the day had arrived, on which they would be able to perpetrate their nefarious crimes. It will be sufficient for you to hear them once, from the witnesses who will be called before you.

On that evening, in pursuance of the suggestion of Brunt, a watch was set in Grosvenor-square at six o'clock. Two persons, one of whom was Davidson, were to take the duty from six till nine, when they were to be relieved by two others, who were to remain till twelve; it was thought that from that time till four in the morning no observation would be necessary, but that at the last mentioned hour the watch should be resumed. Davidson and his associate went into Grosvenor-square, and continued there from six till nine. At that hour they were relieved by Brunt and the witness Adams, and a remarkable circumstance occurred upon that evening, which puts it out of all doubt that the prisoner Brunt was there. It will be proved to you, by witnesses, not

only that he was seen in Grosvenor-square, but that he was engaged in playing at dominoes in a public-house at the corner of Charles-street, which is close to the square, with a young man of the name of Gillan.

Upon the following morning, the 23rd, the day on which the plans of the conspirators were to be carried into effect, you will find that they met at Brunt's house; and that in the afternoon, between two and three o'clock, many of the persons again assembled there for the purpose of proceeding to another place, to which I shall now call your attention. It was thought, by these persons, that, in order to carry into effect the plan of assassinating his majesty's ministers at lord Harrowby's house, those who were destined for accomplishing that part of the plot should be brought together at some spot not very remote from Grosvenor-square; and it will be proved to you that on the Tuesday it was resolved that they should meet near Tyburn turnpike; and that those who were not intrusted with the whole of their schemes should have a word given them, by which they might be able to ascertain, at their arrival there, who were the persons with whom they were to act. It however so happened, that before the Wednesday, the prisoner Harrison procured a stable in an obscure street, called Cato-street, leading into John-street, in the Edgware-road, which was considered by them a very convenient place for assembling and making their preparations for the attack at lord Harrowby's house. The access to Cato-street, at each end, is under an archway; so that it has the appearance rather of a mews than of a street; at one end it is accessible only by foot passengers, at the other end there is an entrance for carriages. This stable was prepared for their meeting on that evening; Harrison and others were seen carrying things into it in the course of the afternoon of the 23rd, and some cloth or sacking was nailed up against the windows of the building on the side looking into Cato-street, for the obvious purpose of preventing the persons opposite from observing what was passing within.

On the afternoon of that day, Thistlewood, Ings, Bradburn, Hall, and others of the party met at Brunt's room, and you will find that they were seen putting flints into their pistols, accoutring themselves, and arming themselves with blunderbusses, pistols and swords, with which they were to proceed to Cato-street, and afterwards to lord Harrowby's.

It was thought by Thistlewood that it would be proper to prepare some sort of address to the people, which should be exhibited that night in different parts of the town, for the purpose of exciting disaffection, and of inducing persons to join their party; and he sat down, and wrote a proclamation, in the preparation of which, circumstances occurred most material for your consideration. It will appear to you, that there being in the room no paper upon which Thistlewood could write

the proclamation, and it having been suggested that cartridge paper would best answer the purpose, Brunt, the prisoner at the bar, sent his apprentice, Hale, to purchase some. Hale went out, and bought six sheets, which were afterwards carried into the room. Upon that paper Thistlewood wrote the proclamation, which it was intended should be stuck up near the places to which they intended to set fire on that night, so that by the light it might be made visible to the persons collected in the street. The address was to this effect: "Your tyrants are destroyed; the friends of liberty are called on to come forward, as the provisional government is now sitting. J. Ings, secretary. February 23rd, 1820." Three of these proclamations were prepared by Thistlewood, for the purpose of being used in the manner I have stated to you.

After this was done, and after they had provided themselves with arms, they proceeded to the stable in Cato-street.

It is proper that I should in this part of the narrative inform you, that upon the preceding day, intimation was given to lord Harrowby, of the plan which these persons had in contemplation, by a man of the name of Hiden, a cow-keeper, living in Manchester-mews, Manchester-street, and who was known to one of the conspirators, the prisoner Wilson. As the night of the execution of their plan approached, they became more and more anxious to procure all the assistance they could; they endeavoured to enlist associates from amongst those with whom they were acquainted, and to whom therefore they had the less difficulty in divulging generally the schemes they had in agitation. Hiden was, as I have observed, known to Wilson, and it will appear to you, that two or three days before the Wednesday, Wilson had imparted to him the outline of the conspiracy, the taking the cannon and the assassination of his majesty's ministers, hoping and expecting that Hiden would join them. Hiden, when he came to reflect on the communication made to him, immediately felt the necessity of making the matter known to those more particularly interested in the event, and he wrote a letter to lord Castlereagh, and communicated to him the intended proceedings, which had been imparted to him by Wilson. He was unable to see lord Castlereagh personally, and he was fearful of being observed to go into lord Castlereagh's house lest it should be known to these persons that he was making a communication; he therefore took an opportunity of watching lord Harrowby, when riding in the park on Tuesday, and he delivered to him a letter addressed to lord Castlereagh, requesting his immediate attention to it, stating that it was of the utmost importance; by these and other means the plot became known to lord Harrowby, and to the government of the country. On the following day, Hiden saw Wilson again in the street, and Wilson then told him that they had fixed to meet that evening in Cato-street; he solicit-

ed Hiden to join them, detailed to him more fully the objects they had in view, and requested he would not fail to attend between six and seven o'clock.

In consequence of their plan being thus known to my lord Harrowby and the government, means were taken to prevent its execution, by the apprehension of these persons in Cato-street, on the evening of the 23rd. Between seven and eight o'clock there were assembled in Cato-street, Brunt the prisoner at the bar, Thistlewood, Ings, Harrison, Davidson, and others to the number of about four or five and twenty. I should here state to you, that the prisoner (who like the rest of his associates was anxious to increase their numbers, and to procure the assistance of as many persons as possible) had, on the preceding day, the Tuesday, applied to a man of the name of Monument, a shoemaker, to whom he had been introduced two or three weeks before, by Thistlewood; he told him he should want his aid on the following day, he imparted to him the watch-word by which they were to make themselves known to each other at Tyburn turnpike, the place of meeting at Cato-street not having at that time been fixed upon. On the 23rd after they had procured this stable, Brunt again saw Monument, and told him that he was to accompany Tidd; that he was to go to Tidd's house, in Hole-in-the-wall passage, who would take him to the place of rendezvous on that evening. You will have it proved to you, that Monument did accordingly call at Tidd's, and that he walked with Tidd to Cato-street, and that he found Brunt there on his arrival.

At Cato-street, the execution of their plans was brought under consideration. They had there collected a quantity of arms and a number of those destructive instruments, grenades, the use of which I will now state to you. It was intended that Thistlewood should knock at lord Harrowby's door, under pretence of having a note to convey to his lordship, and access into the hall being thus obtained, others of the party were to follow him, secure the servants, enter into the room in which the cabinet ministers were sitting, and there execute the murderous plan which they intended to effect. For that purpose they had prepared these grenades, which are balls of considerable size, in the centre of which is a quantity of gunpowder, about three ounces, inclosed in a tin-case; round the case are placed pieces of iron; some of those grenades which have been opened contained long nails, of that description which is used to fix the tires of cart-wheels to the wood work to which they are attached. About eight or ten of these nails are fastened as tightly as they can be round the tin-case holding the gunpowder, with tow dipped in a composition of pitch tar and resin. From the gunpowder a fuse communicated with the surface of the ball, which, being lighted, would produce an almost instantaneous explosion, the pieces of iron would be dispersed around in all direc-

tions, and the consequences would be, that any person who should unhappily be struck by them would be deprived of existence, or be left wounded, maimed, and lacerated. Between seven and eight o'clock they began to prepare themselves for the execution of their designs; and doubts being entertained by some of the party, whether their number was quite adequate to all the objects they had in view, Thistlewood, in order to allay their apprehensions, stated that they had men enough there for the accomplishment of the assassination in Grosvenor-square, and that there were other parties in different parts of the town for the accomplishment of the duties assigned to them. This statement of Thistlewood was founded in fact, for it will appear that after the party had taken their departure from Brunt's house, other persons were expected to call there; amongst them was a man named Potter, one who was deep in their schemes, and was the intended leader of a band upon that night. From Brunt's, these persons were to be directed to proceed to the White Hart, from whence they were to move in divisions to the execution of the various tasks they had to perform. Palin was to be at the head of the fire party, and Cook was to command the detachment that was to take the cannon in Gray's-inn-lane and the Artillery-ground.

After this had been stated by Thistlewood, he proposed that a selection should be made of fourteen to enter the room at lord Harrowby's, to destroy his majesty's ministers. Among those who were to go into that room, were Harrison, who had been formerly in the Life-guards; Adams, who had some years ago served in the Oxford-blues; Ings, the butcher, who had prepared himself for the bloody scene in which he was to be an actor, in a most remarkable way, the prisoner Brunt, and Thistlewood. At the moment when they were separating themselves, the officers entered the stable below, and discovered Davidson, one of the persons included in this indictment, a man of colour; he was armed with two pistols in a belt, a blunderbuss in his hand, and a cutlass at his side, and was standing as sentry, at the foot of the step ladder which led from the stable to the loft above; Ings was also stationed in the stable; he had a black belt round his body, in which were inserted a brace of pistols, and also a remarkable instrument, which will be exhibited to you, a large butcher's knife; he had stated upon the preceding day, and also upon the evening of their meeting in Cato-street, that with that knife he himself intended to enter the room in which the ministers were sitting, and that he had provided himself with it for the purpose of mutilating the bodies of lord Castlereagh and lord Sidmouth; he had also furnished himself with two bags or haversacks, which he had fastened over each shoulder; in these he intended to carry off the heads of those two distinguished persons, in order that they might be exhibited on pikes in the street, to infuriate

the people and to excite them to insurrection. The leading officer directed his followers to lay hold of those two persons, in order to secure them; but the officers being anxious to get into the loft, Davidson and Ings were not taken into custody at the moment, although the knife was taken from Ings. The first of the police who went up was Ruthven; and it will appear, that while he was ascending the ladder, either Ings or Davidson gave an alarm from below to their associates above. On Ruthven's gaining the loft, the first object that struck his notice was Thistlewood, whose person was well known to him, Ruthven having been acquainted with it for some years. Thistlewood, on seeing Ruthven, seized a sword which was on a carpenter's bench before him, and on which other arms were ranged, and retired into a small room adjoining, fencing with his sword, in order to keep off Ruthven and his supporters, who were advancing, and who announced to the persons assembled that they were officers of justice, and that they were come to apprehend them. Ellis was immediately behind Ruthven, and he was followed by an unfortunate man named Smithers.—Smithers, observing Thistlewood in this attitude in the small room, passed his companions, and advanced to apprehend him. On his approaching, Thistlewood came forward and thrust the sword into his heart; the lights were extinguished; a cry was raised of "Kill the thieves, throw them down stairs!" a rush was made to the ladder; the officers were precipitated into the stable; Thistlewood followed close behind them, discharged a pistol, as he descended, at another of the officers, then made his way through the stable and escaped. Several of the persons succeeded in eluding the vigilance of the officers on that night, others of them were apprehended; amongst them Davidson, after a very desperate resistance on his part; and I only call your attention to him now, in order to state his conduct and expressions when he was taken into custody—conduct and expressions evincing most clearly, if there could be the least doubt upon the mind of any man, what was the object of this conspiracy. On his being apprehended, he immediately exclaimed, "who would not die in liberty's cause?" that "he cared not for his life, that the cause in which they were embarked was that of freedom, and who would not perish in that cause?" These expressions must convince you that the object was to overturn the government, and that the assassination of his majesty's ministers was only the first step to the accomplishment of that object.

The prisoner Brunt made his escape; he returned home about nine o'clock, or a little after, and Hale, his apprentice, happened to be in the house on his arrival; he came back with his coat and boots extremely dirty; he told his wife (and this is a part of the case which it is most material for you to attend to) that it was all over, that they had been attacked by the officers, and he had escaped only with his

life. Presently after another man came in, who, it should seem, had been one of the party in Cato-street, and had effected his escape, but had received in the contest some considerable blows and wounds; he stated, that he had been knocked down and hurt; they both appeared to be glad to find themselves again in the society of each other; and the prisoner Brunt stated, that though they had been thus dispersed in Cato-street, "all was not yet over," alluding, undoubtedly, to the different bodies collected in other parts of the town. And he said to the other man, "come along;" and they went then out together; he was absent from that time till near eleven o'clock, when he returned again to his house. Before he retired to rest, he directed Hale to get up on the following morning to clean his boots; and he himself at an early hour awakened him, and then asked him, whether he knew a place called Snow's-fields, in the Borough. The lad replied, "he did not:" the prisoner told him where it was; and then went into the back room (that room which had been hired under the false pretence of being a lodging for Ings, but in which, as I have stated, the meetings of the conspirators were held, and their preparations were made) and from the cupboard in that room, he took out several hand-grenades and some fire-balls; these he packed up in two baskets, covering one of the baskets with an apron belonging to his wife, and which had been used as a window curtain to that room, telling the apprentice, he was to take them and their contents, to a man of the name of Potter, in Snow's-fields. He had just finished, when Taunton, the officer, arrived at the house to apprehend him. Taunton found the prisoner in his own room, and you will hear the conversation he had with him. Brunt affected not to know who it was that had taken the back room; said, that he had nothing whatever to do with it; pretended to be wholly ignorant of the two baskets which he had just been preparing, and denied any knowledge whatever of any thing in that room. An iron pot was standing there belonging to the prisoner, in which they had prepared their pitch and resin, and other combustibles; of this also he said he knew nothing, and persisted in his denial of being acquainted with the contents of the baskets, although he had immediately before been engaged in the act of packing them, for the purpose of being sent off. Upon this he was apprehended, and he now stands here for trial before you.

Thistlewood also made his escape on the night of the 23rd; he did not return to his own home, but fled for concealment to the house of one Harris, in a street near Moor-fields; and on the morning of the 24th, at about ten o'clock, was apprehended there in bed, with some of his clothes on.

I believe I have now detailed, as briefly and as clearly as I have been able, the main facts which will be adduced in evidence against the prisoner at the bar. I can anticipate, perhaps, some of the observations which will be made

to you on his behalf by his counsel, when the period arrives at which they will have to address themselves to this case. I anticipate that it will be argued before you, that the plan which this person had conceived was wild and visionary, was impracticable, and that therefore you are to pay no attention whatever to the evidence which shall be given to you to prove its existence. Let me caution you as to the application of that observation to the present case: whether the plan was practicable or not; whether they had over-rated their force and their means of accomplishing it or not, is not a matter for your inquiry. The only question is, does the evidence which will be adduced to you, satisfy you, that the scheme I have detailed was harboured in the mind of the prisoner at the bar; if it were, and he acted in furtherance and execution of it in the manner I have stated, however wild, however visionary, however impracticable it may have been, the guilt which is imputed by the present indictment will be established and fixed upon him.

But even in our own experience, other plans of a similar nature, equally wild, have been conceived and formed; without adverting to any particular case, you will recollect, that, in estimating the practicability of this plan, you are not to reason upon it in the manner in which you or myself would judge of it coolly in our closets, but you are to remember that these men had long entertained this project; that they had brooded over it till they overlooked all the difficulties which intervened between its conception and its execution; that they imagined a blow once struck by them, would excite the disaffection which they vainly imagined prevailed in this large metropolis among a great number of its inhabitants; that they should be joined by an overwhelming force, and that with that force they should be able to overturn the existing government, leaving to the book of chance what other institution might be substituted for it. The evidence will shew you what were their preparations, preparations wholly inconsistent with the idea that the assassination of his majesty's ministers was the only crime they meditated. You will find that at Tidd's house was seized on the day after their meeting in Cato-street, no less a quantity than twelve hundred rounds of ball-cartridge; they had procured, as I have stated, a great number of grenades; they had cartridges for the purpose of loading cannon; and, in addition to these things, they were provided with fire-balls, intended to be used in burning the different buildings which had been fixed upon, and amongst others the barracks near Portman-square, well known to Harrison, who had been quartered there. These preparations and this ammunition shew plainly, that the work they meditated was not to terminate in the assassination of his majesty's ministers, but that these conspirators had ulterior objects in contemplation, and that they were bent upon the overthrow and destruction of the government.

But let us for a moment consider that part

of the scheme to which your attention will be very much directed in the course of this inquiry, I mean the assassination of his majesty's ministers. With what view could these conspirators meditate their destruction? Were they persons against whom, individually, these men had conceived revenge? Was it against lord Liverpool, was it against the duke of Wellington, was it against the lord chancellor, *personally*, that their hostility was directed? Who were the parties to make the attack? Were these twenty or five-and-twenty persons united by any common bond of interest? I ask you, as men of sense and understanding, whether you can doubt that that part of their plan was more than a preliminary step? that their swords were not to be raised against his majesty's ministers, as individuals merely, but as distinguished personages filling the highest offices in the state, and possessing the confidence of their sovereign. In that character alone, had the illustrious guests of lord Harrowby become the intended victims of the instigators and supporters of this horrible plot. This assassination was to have been the first act of the tragedy; the overthrow of the government was to have been last.

It will perhaps be said that in a case like the present, the testimony ought to be such as to leave no doubt on your minds of the truth of the story which is narrated—that it should come from unpolluted sources, from witnesses untainted by crime. Undoubtedly, in all cases submitted to the consideration of a jury, it is their duty to be satisfied that the evidence is clear and conclusive before they pronounce a verdict against the prisoner. But the secret machinations and designs of conspirators, planning and acting in a scheme like the present, can only be developed to their full extent by the evidence of some of those who have been participators in their guilt. An accomplice in these cases is, generally speaking, the only witness that can be produced fully to discover and make known to the court the plans and machinations of his associates. That the testimony of such a person ought to be watched with the utmost anxiety and jealousy I most readily admit; and unless it receives confirmation from uncontaminated sources, a jury is never advised to come to a conclusion unfavourable to the accused. Upon his evidence alone, in this case, however, I think you will agree, when you have heard the story which the accomplice Adams will tell, and the confirmation which will be given to you of that story—confirmation of the strongest and most impregnable kind, not as to one or two particular circumstances only, but I might say as to almost all the leading facts which he will relate; I say, I think you will be satisfied that he is the witness of truth. To produce confirmation of every part of his testimony would be impossible, and if it were possible, it would render the evidence of the accomplice altogether unnecessary, because the account he is to give might then be proved by witnesses

liable to no objection. The confirmation which you ought to require in this instance should be such as to convince you that the general tenor of the narrative of Adams is true. Such confirmation you will receive from witnesses upon whom there is not the shadow of an imputation—witnesses upon whose veracity you may with confidence rely.

But the case will not rest upon the testimony of an accomplice, though fully confirmed. A witness will be called before you, who was not an accomplice, and who, if his account be not true, was a man endowed with the spirit of prophecy; I mean Hiden; because he, before the transaction took place, communicated it to lord Harrowby, at a time when he had no interest whatever operating upon his mind to induce him to make the disclosure, except a desire of averting that evil which he saw impending over the person of that nobleman and his colleagues in office. Against Hiden no charge could have been or can be preferred, because, although in words he appeared to assent to the scheme of the conspirators, he never acted in a single part of the plot. If you receive from this person not only an account of the scheme, but one completely confirmatory of the testimony of the accomplice, it appears to me that it is no longer possible for you to hesitate on the conclusion to which you are to arrive. I do not advert to the testimony of Monument, because the observations which apply to Adams apply equally to him. I ought, however, to remark, that although Monument was undoubtedly found in Cato-street, and had agreed to meet Brunt and Tidd there that evening, he does not appear to have been fully informed of the extent of the scheme till his actual arrival in the room, and does not seem therefore to be so deeply implicated in the transaction as Adams.

Such being the case, it will be your duty, after you have heard the evidence, calmly and deliberately to weigh the effect of it. If, after the observations which I have made to you, you shall think that the proof adduced does not fully satisfy your minds of the guilt of the prisoner at the bar, and you shall entertain a reasonable doubt respecting it (but it must be a rational and a well-founded doubt), give the prisoner at the bar the benefit of it; but if on the contrary, however wild in your estimation, and however impracticable the scheme may have been, still, if upon considering the whole of the evidence, you shall be convinced that it was formed, and was on the eve of execution, then, gentlemen, it is a duty you owe to yourselves and to your country to act upon that conviction, and, without hesitation, without regard to the consequences to follow from your decision, to pronounce a verdict of guilty.

Lord Chief Baron.—Bring into court the other prisoners named in the indictment who have not been tried.

[William Davidson, Richard Tidd, James William Wilson, John Harrison,

Richard Bradburn, John Shaw Strange, James Gilchrist and Charles Cooper were placed at the bar behind the prisoner on trial.]

EVIDENCE FOR THE PROSECUTION.

Robert Adams sworn.—Examined by
Mr. Solicitor General.

I believe you are a prisoner in custody?—Yes.

Where did you live before you were apprehended?—No. 4, Hole-in-the wall passage, Brook's-market.

What are you by trade?—A shoe-maker.

Were you ever in the army?—Yes.

In what regiment?—The royal regiment of Horse-guards.

How long is that ago?—Eighteen years.

Do you know the prisoner John Thomas Brunt?—Yes, I do.

Where did you first become acquainted with him?—At Cambray in France.

How long since?—In 1816.

By what name did he then go?—Thomas Morton.

Was the British army at that time stationed at Cambray?—Yes, the head quarters were at Cambray.

What were you doing there?—Following the occupation of my trade.

With the army?—Yes.

Do you remember calling on Brunt early in the present year?—Yes.

Where?—At his lodgings in Fox-court, leading into Gray's-inn-lane.

He is a shoe-maker, I believe?—A boot-closer.

Did the prisoner at the bar introduce you to Thistlewood?—He did.

Do you recollect about what time?—On the 12th of January, a Wednesday.

Where was that?—By Clare-market; Stanhope-street I think it was,

At Thistlewood's lodgings?—Yes.

Did Brunt go alone with you, or was there any other person?—Ings was with us.

Tell us what passed upon that occasion?—On entering the room of Mr. Thistlewood, Brunt said to Thistlewood, "here is the man I was speaking to you about." Thistlewood said, "You belonged to the Life-guards formerly, did not you?" I told him I did not, I belonged to the Oxford blues, that was the name I expressed. "No doubt you are a good soldier," he said; I told him "once I was;" "and can use a sword well?" I told him I could use a sword sufficiently to defend myself, but I was out of practice; I could not say I could use a sword so well as I formerly could, for I had not used a sword or any arms for a considerable time. On this Mr. Thistlewood turned his discourse on the different shopkeepers in London, saying they were a set of aristocrats altogether, and were working under one system of government, and he should glory to see the day when the shop-

keepers should have their shops shut up and well plundered; he next turned his discourse upon Mr. Hunt, saying that Mr. Hunt was a man that was no friend to the people, and he had no doubt could he enter Whitehall, and overlook the government books, he should find his name there as a spy to the government; he next alluded to Mr. Cobbett, saying that he, with all his writings, was a man that was no friend to the people, and he had no doubt he was the same as Mr. Hunt, a spy. Brunt here told him he had a couple of other men to call upon towards Carnaby-market, and asked Mr. Thistlewood whether he would walk with him to see the men.

Did he go?—No; there was a word or two dropped from Mr. Brunt to Thistlewood respecting the attending of a raffle.

Has that any thing to do with this?—This raffle was to raffle for a blunderbuss with a brass barrel; I do not recollect that Mr. Thistlewood said he should go, but we left the room.

You, and Brunt, and Ings?—Yes.

And left Thistlewood there?—Yes.

I believe sometime after this, you were in prison for debt in the Whitecross-street prison?—I was.

When did you come out of prison?—The day after the death of our late king.

The 30th of January?—Yes.

After you came out of prison, did you see the prisoner at the bar?—I saw him on the Monday.

What day of the week was the 30th of January, when you came out of prison?—The Sunday.

Where did you see him?—The first of my seeing him was at Hobbs's, the White Hart.

Did you afterwards see him at any room?—I saw him in the evening at a room taken on the same floor, the back room, where he lived.

Did you collect from the prisoner who had taken that room?—I heard him say himself, that he had taken the room for Ings.

Did you attend any meetings at that room?—Several.

Up to what time did you attend those meetings?—Up to the 23rd of February.

From the time you came out of prison?—Yes.

How often were the meetings held?—They were held twice a-day.

Who were the persons that usually attended?—The persons that usually attended were Thistlewood, Brunt, Ings, Hall, Harrison.

Harrison had been in the Life-guards, I believe?—Yes: Davidson.

Davidson is a man of colour, I believe?—Yes: Wilson.

James Wilson?—I did not know his christian name, I only knew his person and his name: Edwards, Tidd.

Where did Tidd live?—In the next house adjoining that in which I lived.

Where is that place?—Hole-in-the-wall Passage.

He is a shoe-maker?—Yes.

Do you know a man of the name of Palin?—Yes; Palin was not so regular; he attended from the Sunday.

From what Sunday?—Sunday the 20th of February; that was the first time I saw him there.

Had you seen Potter there?—Yes, I had seen him before that; but I cannot charge my memory with the time.

What was Hall?—A tailor by trade.

After you came out of prison, which was on the 30th of January, will you tell us what passed at those meetings?—I called up on the evening of the Monday, and there I found several of them; I cannot charge my memory that any thing particular passed that night.

Direct your attention to some meeting where you remember what passed?—On the Wednesday-night following I attended there.

Was Thistlewood there then?—Yes.

Brunt?—Yes.

Davidson?—Yes.

Harrison?—Yes.

Edwards?—Yes.

What did you see in the room at that time?—I saw a number of pike-staves.

Was there any furniture in the room?—At the time we were there, there were some chairs brought in.

Was there any furniture belonging to the room?—No, only the stove that was fixed.

When you used the room, where did you get chairs?—They were brought from Brunt's room, the adjoining room.

What sort of things were those pike-staves you have mentioned?—They were rough, just as if they had just come from the country, quite green.

What passed as to these pike-staves?—I saw Bradburn cut the ends of the staves off, and knock the ferrules on.

Lord Chief Baron.—You did not mention Bradburn as being there?—He was there.

Mr. Baron Garrow.—Do you mean the end of one, or the ends of more of them?—One end of each pike staff; after they were all knocked on this first dozen, it was considered, in consequence of the ferrule being too small, that in boring the hole and cutting the stick down to it, the end of the pike staff would not be strong enough to support it: that is all I can speak to respecting that time.

Mr. Solicitor General.—Was any thing done afterwards to alter them?—Yes; they were cut off again, and some ferrules put in.

By Bradburn?—Bradburn had instructions to get the ferrules, but he did not get them, and afterwards Brunt bought the ferrules larger and deeper.

Do you know whether Bradburn is a carpenter?—I suspected he was a carpenter, but I was not certain.

Were those new ferrules put on in the room at that place?—They were.

Lord Chief Baron.—Were the new ferrules brought in that evening?—No; Brunt brought those ferrules in the course of the day, and put them on.

Mr. Solicitor General.—Do you mean the same day?—No; I saw them afterwards.

Do you remember being there a short time before the funeral of the king?—Yes.

Whom did you find there at that time?—I found Thistlewood, Harrison, Davidson, and Wilson.

Tell us what passed at that meeting?—At this meeting Harrison told Thistlewood that he had seen one of the Life-guards, and he had learnt from him that every Life-guardsman that could be mounted, was to attend the funeral of the late king, as well as all the foot-guards that could be spared from London would be there, and the police officers that could be spared from London, were to be there at the same time.

Harrison, who made this communication, I think you say had been in the Life-guards?—Yes.

Do you know how long he had left the Life-guards?—I cannot say; I have heard him say he had been in the Life-guards.

Having made this communication, as coming from the Life-guardsman, what did he say further?—He said that after he had left the Life-guardsman, it occurred to his mind, that this might be a favourable opportunity to collect what men they had amongst themselves together on that night, with an intention to kick up a riot in London, as he thought all the officers, soldiers and what not, would be out of London, that there would be nobody left in London that could protect it scarcely; on his coming into the room, seeing Thistlewood, he communicated his thoughts to Mr. Thistlewood.

He said that had passed in his mind, in consequence of the communication of the Life-guardsman?—Yes.

And on Thistlewood coming into the room, he communicated those ideas to Thistlewood?—Yes, he did, it meeting with Thistlewood's ideas: Thistlewood immediately improves upon the plan how it should be done; he proposed that the two pieces of cannon in Gray's-inn-lane should be taken, and the six pieces of cannon at the Artillery-ground were to be taken on the same night; after this was done, they thought it highly necessary to send a party up to Hyde-park corner, in order to prevent any orderly being sent from London to Windsor, to communicate what was going on in London; at the same time he proposed that the telegraph over the water should be taken, in order to prevent this telegraph communicating any intelligence to Woolwich of what was going on in London; he thought at the same time it would be necessary to cut trenches across the road, in order to prevent any cannon from Woolwich entering London.

Who said that?—Thistlewood.

The whole of what you have now been stating, was said by Thistlewood?—Yes; on doing this, he thought the soldiers, being so far distant from London, in coming up from Windsor, they would not be able to come up to London time enough to render the country assistance, that they would be so knocked up and fatigued that they would not be able to do any thing. Here Mr. Thistlewood, for the first time that I can vouch for, said that there must be an offer made to the soldiers, in order to bring the soldiers over to them; and if they found that the soldiers were determined to act against them (Harrison was the man that proposed the hand-grenades, that were made for the destruction of human creatures), they were to enter the houses in the streets, and fling these hand-grenades in among the soldiers in the streets to destroy them as fast as possible.

Was any thing said about the ports?—It was proposed by Thistlewood, that there should be men sent to the different sea-ports, such as Dover, Brighton, Margate, and those different places, with an express order, that, if any persons were suffered to leave the country without an order from the provisional government, their towns were to be blown down over their heads; he mentioned particularly that they ought as soon as they could collect force enough, which he had no doubt they should, to send a very strong force down to Brighton, in case the new king should be there after the riot was kicked up, which he did not suppose he would in consequence of his indisposition; they were to plunder Brighton, and as for his being crowned as king, Thistlewood said that was all nonsense, for that we did not intend that should ever be; this finishes the subject, I believe.

After that conversation had taken place, did the prisoner at the bar, and any other person, come into the room?—Yes.

Who?—Ings and Brunt came into the room.

Was the subject of the previous conversation communicated to them?—It was communicated to them both by Thistlewood.

Can you tell us what Brunt said?—Brunt and Ings expressed themselves both together, that there would be nothing short of the assassination of the ministers should satisfy them.

Had Brunt at any time before that, told you any thing about any plan to assassinate his majesty's ministers?—On the 2nd of January.

Was that before he had introduced you to Thistlewood?—It was.

At the meeting to which you spoke when I first asked you the question?—In his own room.

When you called upon him?—Yes.

Was it at that meeting?—There was no meeting then.

When you and he met upon that occasion, did he communicate that plan to you?—He

communicated this plan to me on the 2nd of January in the street, as we were walking along.

Then upon this occasion to which you have now been speaking, he said that nothing would satisfy him except the assassination of his majesty's ministers?—Yes.

Mr. *Baron Garrow*.—You do not ask him as to the particulars of that conversation.

Mr. *Solicitor General*.—No, my lord, not the details of it. Did any thing further pass at that meeting after he and Ings had said that nothing would satisfy them but the assassination of his majesty's ministers?—This was the night when Ings expressed himself in the room, that he had been to the Park, with the sole intention to shoot the Prince Regent, as he was at the time.

Did he produce any thing?—He produced a pistol from his pocket, and said that was the pistol that he had taken; he pulled the pistol from his left pocket, held it out in that way, and said "Damn my mortal eyes, but that is the pistol that I took;" that was the very expression.

Upon what occasion was it he said he went into the Park to shoot the Prince Regent?—It was the time that the Prince Regent went to open the Parliament.

When Brunt had originally communicated to you this intention to assassinate his majesty's ministers, did he say when that was to be done?—It was to be done the first time the ministers assembled together for a dinner.

What dinner?—What they call a cabinet dinner.

Do you remember a meeting that took place on Saturday the 19th of February?—Perfectly well.

Who was present at that meeting?—I saw Thistlewood, Brunt, Harrison and Wilson; and Ings was there.

What passed at that meeting? was that in the forenoon or evening?—It was between eleven and twelve o'clock.

Was Davidson there at that time?—I cannot positively say.

Tell us what passed at that meeting?—On my going into the room, they sat with their heads together, as if they were in a consultation about something; I pretty soon found out what.

What was it?—They got up all on the sudden, Thistlewood said, "Well, it is agreed; if nothing transpire between this and Wednesday-night, we intend to go to work, as we are all so poor we cannot wait any longer." Thistlewood proposed directly, that there should be a committee sit at nine o'clock to-morrow morning, in order to draw up a plan to act upon.

Was that agreed to?—Yes; he gave orders to Brunt at the same time to tell the men that were to come by his instructions, to come armed. Here Brunt expressed himself, saying, "it is a parcel of nonsense," with an oath.

"to think of any officers coming here;" if they were, he would execute them in the room, or murder them: he expressed himself in a different way, language that it is not proper to use here.

That if they came to the room, they were to be murdered?—That he would take care they should be murdered; and he would take good care that it should not be found out.

Prisoner.—My lord, can the witness look me in the face, and the jury, and state that?

Witness.—I can, with a good conscience.

Prisoner.—Then you are a bigger villain than I took you for before.

Lord Chief Baron.—You will be at liberty to say any thing you choose by and by, but you should not interrupt the examination.

Mr. Solicitor General.—Look at the jury, and state whether that is a fact?

Witness.—It is the fact, and you know it yourself Brunt.

Lord Chief Baron.—Do not get into any conversations with the prisoner.

Mr. Solicitor General.—If the prisoner desire it, look more towards the jury, so that the prisoner may see you. After this did they separate?—Then they separated.

You spoke of some pike-staves, had you seen any other arms of any description before the Saturday?—I had seen a sword; I had seen those hand-grenades; some of them were then in the room.

One sword, or two?—One sword, and some hand-grenades which were made in the room; and I have seen pistols pulled from their different pockets.

Were those things that you saw from time to time in the room kept there, or were they carried on to some other place?—They were removed from there to Tidd's lodgings in Hole-in-the-wall-passage.

What was that place called?—The dépôt.

Was any reason given why they were not kept there?—The reason given by Mr. Thistlewood that he wished them to be removed from that room to the dépôt was, that they might be there safe, in case any body should come into the room who did not know any thing of their intentions, that he should not have any suspicion what their intentions were.

Did this meeting take place in pursuance of the arrangement on the Sunday-morning?—Allow me one moment, as Mr. Brunt has denied what I have said. Brunt was the man who carried the principal part of those hand-grenades to Mr. Tidd's, for I followed him there myself; I followed him into the room of Tidd, and saw them lie on the floor; and I saw Tidd's daughter put them into the box under the window with my own eyes.

Did this meeting take place on the following morning?—Yes, the Sunday.

Who was there?—There was Thistlewood,

Ings, Hall, Brunt, Harrison, Davidson, Bradburn, Edwards, Cook, and there were three others, that came afterwards; there were twelve in all.

Tell us what passed at that meeting?—Between eleven and twelve o'clock, on the 20th January, Thistlewood looking round the room, seeing twelve men——

Do you mean January or February?—February; Thistlewood seeing twelve men, said, "Well, gentlemen, we may as well proceed to business; here is enough to form a committee;" Tidd was proposed to take the chair.

Mr. Baron Garrow.—He had not mentioned Tidd as being present at this meeting?

Witness.—On Tidd taking the chair, with a pike in his hand——

Lord Chief Baron.—Was he there when you went in, or did he come in afterwards?—He was there among the first. I might, gentlemen of the jury, possibly, not charge my memory as to all that might be in the room, at the different times I was there. Though I have not mentioned Mr. Tidd being in the room, he certainly was there, for he was the first that spoke to me in the room. On order being called, Mr. Thistlewood, standing on the left hand side of Tidd, said, "Well, gentlemen, as we are all met here, we have no occasion," turning his head to the door, "to make mention of any names; I suppose you all know what you are met for, and as we have all waited so long, with an expectation of the ministers dining together, finding there is no likelihood of their coming together, we have come to the resolution, that in case nothing occurs between this and next Wednesday-night, we intend to take them separately;" he then begins to state his plan. He proposed then the west-end job; he called the job that was intended to assassinate, "the west-end job." He proposed after this was done, or at least at the same time, that the two pieces of cannon in Gray's-inn-lane should be taken and the six pieces of cannon at the Artillery-ground should be taken, and that Mr. Palin should take the command of another party, in order to set fire to the different buildings; Cook was the man that was appointed to take the lead of taking the six cannon in the Artillery-ground.

Mr. Solicitor General.—To take the command of the party that was to take them?—Yes.

Was Cook at that meeting?—He was, I mentioned him. As to the time, he said we could not come to the exact time, for the present, but we should have an opportunity between that time and the time of its being to be executed, to fix the time, but he thought forty men would be enough for the west-end job, and more if he could get them, of which he said he had no doubt, and as to further proceedings on the plan, that would be too at another time.

That further particulars, as to the execution of the plan should be settled at another time? —Yes; as Mr. Brunt was coming forward with a motion respecting the assassination, how it was to be done, Brunt came forward to address what were in the room, but was put a stop to by Thistlewood saying that the motion he had made ought to be put from the chair; that if any person had any thing to say upon it they should state it; the motion being put and agreed to by all in the room, Brunt came forward and stated what he had to say. Brunt proposed, that as there was no signs of getting them all together, they should be taken separately, and that it should be done in this way, as many men as could be raised, or rather as many as they thought they could assassinate, they were to divide what men they had got into as many parties as they thought they could get men to assassinate; if they had forty men, they were to divide them into so many parts.

How many was each party to consist of?—That was not said; when these men were so lotted out, he proposed that a man from each lot should be drawn out for the purpose to assassinate whoever they might be appointed to do; that it should be done regularly by drawing lots; if that man that was drawn did not execute his duty from any signs of cowardice, he was to be run through on the spot; upon this I gets up myself, and told him I wished to ask him a few words on what he had dropped, whether it was not possible for a man to make an attempt in a thing like that and fail, says I, “do you mean to say, that a man so failing, is to be run through upon the spot whether or not?” “Certainly not, unless there is proof that the man is a coward.” I sat down; this motion directly after was put from the chair, and it was agreed to in the same way as the other; directly after this in came three other men.

What were their names?—Palin, Potter and Strange.

Upon these persons coming in, were the matters that had previously passed communicated to them?—They were communicated as before to them.

They were communicated as they had passed?—They were.

Did either of those persons make any observation?—Palin.

Was that the man that was to head, as you say, the fire party?—Yes.

What observation did he make?—After Mr. Palin had consented to the plans, he got up and addressed himself to the chairman on the subject of what had been dropped, saying, “agreeing as I do with what has been said, and I have one amongst the rest agreed to it, I wish to know how these things are to be done, as there are so many objects you talk of at one time provided;” he said, they could all be carried; he thought that it would be a great acquisition to what they had in view; “this is what I wish to know,” he says, “you talk

of taking forty men for the west-end job; you talk of taking the two pieces of cannon in Gray’s-inn-lane, and six at the Artillery-ground and then propose me with my men setting fire to the different buildings, but you ought to know better than myself what men you can command. I for my own part can give no satisfaction what men I can bring forward, unless I may be intrusted from this committee to state to them what has passed in this room this morning. If I can have that power to tell the men I may have to call upon what it is they are going about, and when they will be wanted, I should better know how to act.”

Upon his stating this, what was said to him? —Upon his stating this, it was stated by Mr. Thistlewood, Brunt, and Tidd, that if Mr. Palin had men that he could place that confidence in, they did not see where the harm would be in making the communication to them; upon this Mr. Palin sat down satisfied, and nothing particular occurred to the chair afterwards to the best of my recollection.

After the chair was left, what then passed? —After the chair was left, Thistlewood turned himself round on a sudden, and said, “Oh! Brunt, now as Palin is here, you can take him to this place which is close by, and let Palin see whether the place is practicable to do or not.”

Upon that, did Brunt and Palin go out of the room together?—Brunt and Palin went out of the room together to examine this place, and see whether it was practicable for Mr. Palin to do.

How long did they remain absent?—To the best of my recollection, about ten minutes.

When they came back what was said?—Mr. Palin gave in word, that the place was a very easy job, and would make a good fire.

Was the place mentioned?—This place was Furnival’s-inn-buildings.

Was it mentioned?—It was not mentioned at that time; I heard Brunt tell Mr. Thistlewood of it before that time; it was Brunt and Tidd found out the place.

That was mentioned at a previous meeting? —Yes.

The building was going on at the time; it was not finished?—The back part of the building is not finished now, I believe.

I believe this place, Fox-court, is very near the back of Furnival’s-inn?—Very near.

What further passed at that time?—Some of them began to separate, saying, they had men to call upon, and to acquaint them when they would be wanted; after this, Thistlewood dropped a word to this effect to Brunt, “I think we had better, between this and the time of going to work, collect what men we can together, in order to give them a treat;” Thistlewood said, he did not know how that was to be done, for they were all so poor; upon this, Brunt was the man that turned round, walked from the fire and back again, “Damn my eyes, I have a pound note, though I have done little or no work lately, but I have a

pound note that I have reserved to treat my men, and I will do it."

What further passed?—There was some other communication.

Was any thing said about any communication to Hobbs?—Yes; Thistlewood was the man that said, he did not know where we could take them to, after Brunt expressed himself that he would spend the pound note; he said, "I suppose we could have the room up stairs at Hobb's."

That was at the White Hart?—Yes.

Was that the place where some meetings were held, before they got the room in Fox-court?—The very house, but not the room.

It is not a part of the house, but a back room, in which you used to meet?—A back room in the yard. Brunt said, he did not like to go there, in consequence of what I had dropped.

As to the communication that had been made?—Yes; Brunt said, "never mind, as time gets so near; I do not see what we have to fear, for if any officers come into the room, we will take care of them."

Did you, shortly after this, separate?—Shortly after.

This you have mentioned was Sunday?—It was.

Was there any meeting held on the Monday?—Yes, there was.

Was there any meeting held on the Tuesday morning?—Yes, there was.

What time was the meeting held on Tuesday morning?—At about ten o'clock.

Was the prisoner Brunt there?—Yes.

Thistlewood?—Yes.

Tidd?—Yes.

Ings?—Yes.

Hall?—Yes.

Yourself?—Yes; Wilson and Harrison and Edwards; there were Bradburn, Palin, and Potter there besides.

After they had met on the Tuesday-morning, was any communication made as to a dinner?—Yes; on Mr. Edwards coming into the room, Mr. Edwards was the man that communicated to Thistlewood, there was an account in the paper of the prime ministers being to meet to dine together on the Wednesday-night.

Mr. Gurney.—Where was that to be?—At lord Harrowby's, Grosvenor-square.

Was any observation made by any one, upon that communication with Edwards?—Thistlewood made an observation.

What did he say?—He said he had seen a paper that morning, and he did not see any account of it; in order to satisfy the men that were then in the room, Thistlewood proposed that the paper should be fetched.

Did Edwards say how he came to know it?—Seeing it in the paper.

That was the communication he made, that he had seen it in the paper?—Yes.

Was the paper sent for and brought?—It was; Hall was the man that fetched the paper.

What paper was it?—The New Times.

Upon the paper being brought, how did it turn out?—Exactly as Mr. Edwards had said.

Upon that, what passed?—On this information being communicated from this paper, it was proposed by Thistlewood, that there should be another committee sit to alter the plan of assassination, as it had been proposed on the Sunday.

Did Thistlewood say any thing more at that moment?—No; but in the interval of this time there is one circumstance I wish to state; Harrison and Davidson came into the room in the interval of the paper being fetched; Harrison brings a bag of musket balls, Davison brings the balls, Harrison brings in the powder; with this Thistlewood calls me to the chair, as I was not very well.

Before you were called to the chair, do you remember any observations being made by Ings?—Ings, in the interval of the paper being fetched, pulled out three daggers; those daggers, he said, he had prepared with the sole intention of assassination by themselves.

You mean for separate assassination?—Yes; taking one in his hand at the same time, he expressed how he intended to do it.

How he had intended or now intended to do it?—How he had intended to do it making use of a very coarse expression, which I will not repeat.

Do you remember his saying any thing more?—Not at that moment.

Any thing about lord Castlereagh?—In the course of the day.

Go on and relate what took place next?—The chair was taken by myself, and I called to order.

Before you took the chair, do you remember Brunt saying any thing after the paper was brought in and read, and it was found there was a meeting?—Yes; on the news that was communicated in the paper, Brunt expressed himself—"Damn my eyes, now I believe there is a God, in calling these thieves together; it has often been my prayer that they would all meet together, now God has answered my prayer."

Then you say Thistlewood proposed there should be a committee, and that you should take the chair?—Yes.

Did you do so?—I did.

What passed next, upon your taking the chair?—Upon Mr. Thistlewood coming forward to express the plan he had then to propose, I called to order, and said, "gentlemen, before we proceed any further in this business, I hope you have given a due consideration to what fell from my mouth yesterday morning."

What was it you had mentioned on the morning of the day before?—The account that Mr. Hobbs, the landlord at the White Hart, had given me.

Something that Hobbs, the landlord at the White Hart, had said to you?—Yes.

What was that something?—Hobbs told me privately, by myself, that there had been two officers there, saying that there was something

in hand more than there ought to be; that they had got information at Bow-street, and at lord Sidmouth's office.

You referred to that which you had stated upon that subject?—Yes.

Upon your bringing this up what took place?—Upon my bringing this up, Palin was in the room; I had seen him before; Thistlewood was going to speak again.

I am not asking now all which took place on the morning before; but, on your saying "gentlemen, I hope you have considered what I said yesterday," what passed?—I wish to state that transaction, word for word as it occurred.

You have given me enough of the communication you before made; will you now go on with what passed at the meeting, when you were in the chair, when you said you hoped they had given a due consideration to what had fallen from you the day before; who took that up?—Palin took it up, and said he wished for some explanation of that before the business proceeded any further; upon this Brunt gets up, saying, "you shall have an explanation;" he gets up and communicated to the whole room nearly the same as I had to them; after he had done this he proposed, in order to do away this, that there should be a watch set on lord Harrowby's house.

Did you remain in the chair at this time, or were you put out?—I was in the chair at this time; this watch was to begin at six o'clock that night, two were to go on at that time; those two men were to go off at nine, and to be relieved by two others, who were to remain till twelve, and the watch to commence again the next morning at four o'clock, and to continue till the evening, when they intended to go to work; those men on watch were to look to see who entered the house of lord Harrowby, such men as police officers or soldiers; if they entered the house they were to communicate it to the committee; if there was nothing of this kind seen to go in, he was determined that the work should be done to-morrow night.

Who was he?—Brunt.

What did Thistlewood say?—On this being done, men were picked out for that purpose.

Who picked them out?—Brunt himself.

State in what manner they were picked out; what was said?—They were picked out for the purpose, but I cannot give you sufficient satisfaction who all those men were that were appointed; Davidson was one of the first of them that was to go on; Brunt and Tidd were the two next that were to relieve them.

Davidson would be from six to nine, and Brunt and Tidd from nine to twelve that night?—Yes.

Was any arrangement made as to the manner in which this should be done the next night?—The assassination; yes.

What passed upon that?—Thistlewood upon this came forward: "As to what has fallen from Brunt's mouth, respecting what has been said, if there is a proof that there has nobody

entered the house, such as soldiers or police officers, I shall propose a plan in order to take them altogether!" He proposed himself to go to lord Harrowby's door with a note in his hand, to deliver to the servant, saying, he must have an answer to this note; on his going into the house he was to be followed.

By how many?—The others were to rush in directly after him, seize upon the servants, present a pistol to them, and threaten them with instant death if they made any resistance; at the same time others were to go and take the command of the stairs.

How many to take the command of the stairs?—Two to take the command of the stairs leading to the upper part of the house? two to take the command of the stairs leading to the lower part of the house; each man of these were to have a hand-grenade and pistols and a cutlass. If any attempt were made to retreat from the upper part of the house, this hand-grenade was to be thrown among them; and if any attempt by the servants from the lower part, a hand-grenade to be thrown among them.

Was any thing to be done with respect to the area?—There were two men to be placed there; one with a blunderbuss, and the other with a hand-grenade.

What was to be done with respect to the dining-room?—After these men had secured the servants and stairs, Ings proposed himself to enter the room first; he was to be followed by two swordsmen.

Who were they to be?—Myself one, and Harrison the other.

Did Ings say what he should say on going in?—Ings said, that on going in, he should say "Now, my lords, I have as good men here as the Manchester yeomanry; enter citizens and do your duty."

What were the others to do?—On this word of command from Ings, they were to rush into the room, to be followed by Ings with his broad knife, swearing that he would cut their heads off as fast as he could get at them.

Did he mention the heads of any persons in particular?—The heads of lord Castlereagh and lord Sidmouth he was determined to bring away with him in his bags, and one of lord Castlereagh's hands. There is another circumstance I have not stated before; this hand he intended to cure, as he said that would be thought much of in a future day; I wish to state this one circumstance, for fear it should slip my memory, as I believe I have not stated it, what Ings himself at a subsequent meeting to this had proposed.

Do you mean by subsequent, before or after?—Before this he had expressed himself, after he had got the head of lord Castlereagh and Sidmouth, that he would exhibit those heads upon a pole about the streets; Thistlewood improved upon this plan; he thought it better to put them on a pike, place them behind the cannon, and carry them about the streets, in order to terrify the people.

After doing this at lord Harrowby's, what was it proposed you should do?—I have not finished yet; on Thistlewood saying this, Bradburn improved it immediately, saying, he would immediately after it had been exhibited here inclose the head in a box, and send it to Ireland.

After you had done at lord Harrowby's, what was to be done next?—The next thing that was to be done after leaving the house, was to be done by Harrison.

What was he to do?—He was to go to the Horse-barracks in King-street, and set fire to the shed.

With what?—A ball prepared for the purpose.

Who was to support Harrison?—Wilson.

From thence where was that party to proceed to?—They were to proceed from thence to Gray's-inn-lane.

To what place in Gray's-inn-lane?—The City Light-horse barracks.

What to do?—To take the two cannon from there.

Was it said whether the party were to go from thence, or whether they were to meet any body else?—There was to be somebody in waiting there.

After getting those cannon at the Light-horse Volunteer barracks, to what place were you to proceed next?—They were to proceed from there to the Artillery-ground, unless things occurred afterwards to the contrary.

Whom were they to meet there?—Cook.

Whom besides?—That I do not know.

What were they to do at the Artillery-ground?—To take the six cannon from there, and after they had got them, they were to load them, and bring them into the street loaded.

What to do?—If Cook found himself sufficiently strong by people, as it was supposed, coming over to them, if he thought himself capable of advancing to the Mansion-house, he was to do it.

If the Mansion-house was taken, what use was to be made of it?—It was to be the seat of the provisional government.

Was any arrangement to be made of the cannon that were there?—The cannon were to be arranged in this way; there were to be three placed on one side of the Mansion-house, and three on the other.

For what purpose?—For the purpose, if they refused to give up the house, of firing into it on each side.

After that, was any place near the Mansion-house to be attacked?—The Bank of England was to be attacked, and taken if possible.

What was to be done there?—To plunder the Bank, but Thistlewood said not to destroy the books.

Did he assign any reason?—He assigned the reason to secure the books, in order that they might be enabled to see some of the proceedings of government before that, that they were not then in possession of. There are

some few words I believe I have not stated yet in court, with respect to the finishing of the concern; Mr. Thistlewood and Cook agreed between themselves that if he, Cook, found himself so situate as to go to the Mansion house, he was to send an orderly man forward to stand against the door of saint Sepulchre's church, to wait the arrival of an orderly to be sent by him, Thistlewood; on this being done, they were to return to their separate parties, to give instruction to the different parties how they were situated.

Do you remember Harrison making any proposition about any sign or counter-sign?—Yes.

What was it?—Harrison proposed that there should be a countersign agreed upon, to give to those men that had to go round to tell the men that they would be wanted to-morrow night.

What did he propose that should be?—He proposed that the countersign should be button, in this way *b, u, t.—t, o, n.*; there was to be a man fixed at the end of Oxford-street, that the party who should go up and say *b, u, t.*, was to be considered as one of the party, and he was to answer *t, o, n.*, to shew that he belonged to the party too.

This was on the morning of Tuesday?—Yes; on this being done, Harrison would procure a place between this and the time; and the men that were to come up so, were to be conducted from the end of Oxford-street to that place.

Did you go to Fox-court again in the afternoon of that day?—Yes; I did.

Did you perceive any thing as you entered the room?—On my going up stairs, I perceived a strange smell; on my going into the room I saw Ings, Hall, and Edwards.

What was Edwards doing?—Edwards was making fuses for the hand-grenades.

What was Ings doing?—Ings was dipping those things for the fire balls into an iron pot, into ingredients that were mixed for that purpose.

What was Hall doing?—Hall was laying the paper on the floor in order to receive those balls after they were dipped into the pot.

Did you leave the room and call again?—I left the room, and called again in the evening.

Whom did you see then?—I found Thistlewood there, and two strange men that I had not seen before.

Any other that you had seen before?—In the course of the evening they were pretty well all there.

Davidson you have said was to go on watch at six?—Yes.

And Brunt and Tidd to relieve him?—Yes.

Did Brunt and Tidd go to watch at nine?—They started for that purpose.

After they had started, did any thing occur?—After they had started, they called at a house to meet a man that Tidd was to have met before, and finding this man, he (Brunt) came back again to take another, and he pitched upon me to go with him.

Did you go with him in Tidd's stead?—Yes.

When you got to Grosvenor-square, did you find Davidson on the watch?—Yes.

And you relieved him?—Yes; we did.

You went about nine I suppose?—Yes.

From nine to twelve was your time?—Yes.

While you were on the watch, did you and Brunt go into any public-house to take refreshment?—We did.

Where is that public-house situate?—It is at the corner of a mews, directly at the back part of lord Harrowby's house, but the name I do not know.

How long do you think Brunt and you staid in the house?—Till about eleven o'clock.

What time did you go in?—I suppose a quarter or twenty minutes past nine.

You staid there about an hour and a half?—Yes.

Did either of you play at any game with any person there?—Brunt played at dominos with a young man that was there.

At about eleven, did Brunt and you leave the public-house, and return to your watch in the square?—We did.

About what time did you leave your watch?—Turned of twelve.

Did you stay in the house the whole of the hour and a half, or go out occasionally?—I went out twice myself.

On Wednesday, did you go to Fox-court?—I did.

At about what time?—About two o'clock, to the best of my recollection.

Did you first go into the back room, or into the other room?—I first went into Brunt's own room.

Did you find him there?—I did.

Did any persons come into that room to you?—Strange came in first, and two other strangers, whom I did not know.

Did you see any weapon in Brunt's room?—I saw pistols.

Was any thing done with them?—They began to try to put the flints into them.

Did they go on with that?—On those two other strange men coming in, Brunt proposed to go into the other room.

Do you remember, whether any observation was made while they were putting the flints in, before he desired them to go into the other room?—I cannot charge my memory.

However, he proposed they should go into the other room?—Yes, he did.

And Strange and the two strange men did go into that room?—Yes.

Did you go into the back room too?—Yes.

Did Brunt?—Yes.

Did you see any weapons there?—I saw pistols, cutlasses, and blunderbusses.

Did any persons come?—Just afterwards, Thistlewood came.

Did any others come after him?—Yes.

Who came in next after Thistlewood, as well as you can remember?—To the best of

my recollection, Ings and Hall came afterwards, and other strangers after that.

When Thistlewood came in, do you recollect what he said?—When Thistlewood came in, he looked round and said, "now my lads, this looks something like; it looks as if we were going to do something."

Did he address you?—He clapped his hand upon my shoulder, and said, "how do you do Mr. Adams?" I told him I was not very well, and I was very low in spirits. He said, "what is the matter? you are not low spirited in consequence of what we are going to do." I told him I wanted some refreshment.

Did Brunt send out for any thing?—By the orders of Thistlewood he did.

What did he send for?—Some gin and some beer.

What passed next?—Mr. Thistlewood said, he wanted some paper.

For what purpose?—In order to draw up some bills; he wanted such paper as the newspapers were printed on, but he did not know how to ask for it; what was the name of it.

By bills, what kind of bills do you mean?—Large posting bills.

Did you propose any paper to him?—I told him cartridge paper would answer his purpose.

Upon that, did Brunt say any thing?—Upon this, Thistlewood gave Brunt some money to fetch this paper, he saying, that either his apprentice or his boy should fetch it.

Did Brunt send for it?—Yes.

Was it brought?—It was.

When the paper came, what did Thistlewood do?—He sat down to write the bills, after a table and a chair being brought in.

From what place?—From the front room; Brunt's room.

Did he write?—Yes, three bills.

After he had done that, did he say what he had written?—He read it to those that were in the room.

After those three copies were written, what was done with them?—After the bills were written, I saw them laid down to dry; and then afterwards I saw one in the hands of Thistlewood, and another in the hands of Ings.

Mr. Gurney.—We have given them notice to produce them my lord.

Mr. Adolphus.—I admit the notice my lord.

Mr. Gurney.—Give us the words he pronounced?—"Your tyrants are destroyed; the friends of liberty are called upon to come forward as the provisional government are now sitting. James Ings, secretary, February 23, 1820."

Did Thistlewood write, or attempt to write, any more than those three?—No; Thistlewood expressed himself, in writing the last bill, tired; he did not know what was the matter with him.

What appearance did he exhibit?—He seemed to be rather agitated.

Were those written small or large?—In largish letters; writing letters.

Writing letters, but large?—Yes.

Was it said in any part of the conversation where they were to be placed?—They were to be placed against the different buildings that were set on fire, in order to let the people, who came to those fires, know what was done.

After that, did Thistlewood propose for any other person to write?—He proposed to Hall to take the pen.

Did Hall do it?—He refused it.

Upon that did any other person take it?—Upon that another person took it; he had at first refused it.

Do you know who that was?—No, I do not.

He wrote something, we will not ask what?—He did.

Who dictated to him?—Thistlewood.

After this, did you see Ings do any thing?—Yes.

Did he accoutre himself in any way?—He accoutred himself; he first put a black belt round his loins; after that he hung another over his shoulder; this belt round his loins was to contain a brace of pistols, the one over his shoulder was for a cutlass.

Did he put any thing else over his shoulder?—He put a couple of bags over his shoulder in the shape of a soldier's haversack.

What did he then say?—On viewing himself, he perceived he had not got his steel; he said he thought himself not complete without his steel.

Did he produce any thing else he had?—He produced a very large knife.

What kind of a knife?—A knife with a very broad blade, and a handle with wax-ends wound round it.

Did he mention what was the use of those wax-ends?—To keep his hand from slipping.

Did he say what he would do with this knife?—That this was the knife he had procured for the sole purpose of cutting off the heads of lords Castlereagh and Sidmouth.

Did the others who were in the room, do any thing with respect to the weapons that were there?—They all took an active part in procuring themselves pistols and cutlasses, and different things.

Do you remember any coming in late in the meeting?—Palin came in.

Did Thistlewood and Brunt stay after that, or did they go away?—They left the room after this.

About what time did they leave the room?—It could not want a great deal of five o'clock; it might want twenty minutes or half an hour.

Do you recollect Palin saying any thing to the party that were there?—Yes.

What did he say?—He said he hoped that all present knew what they had met there upon; he hoped if they knew what they were met upon that they had given it a consideration what they were going to do; in the first place he wished them to inform themselves, whether

the assassination of the ministers was likely to be a benefit to the country, "if you find, or if you think that it is likely to be a benefit to your country, and the people will come over to you in consequence of doing it; you ought to come to the determination between yourselves, for every man to stick true one to another; if it should be proved that any one of you is in danger from the opposite party, the others ought directly to go to his assistance."

If any man flinched, did he say what should be done with him?—That if any man flinched, that man ought to be run through; he was here interrupted by a tall man, that was in the room, saying, he could see the meaning of his speech; but he spoke as if all in the room, he thought, knew what they were met there for.

The tall man said that to Palin?—Yes.

"I see pretty well the meaning of your speech; but you seem as if you thought all in the room knew what we were going to do?—Just so.

What was said next?—That was what he wished to know himself, and some others.

"That is what I, and some others, want to know?"—Yes; "I myself am not afraid of myself, nor ought any man that turns out on a thing like this."

To be afraid of what?—To be afraid of his life; there were some other words that I cannot charge my memory with, but Palin was going to speak again, but Brunt came in.

What did he say?—Seeing, as I thought, an alteration in the countenances of the men, he wished to know the cause.

Did he say that he observed an alteration, or what did he say?—No, he did not say that.

Give us his words; "what is the matter," or what?—He asked, what was the matter.

Upon his asking what was the matter, who answered him?—This tall man.

What did he say?—He said there were some in the room, and himself, who wished to know further, what they were going to do.

What answer did Brunt give?—He told him this was not the room where they were to know that; that if they would go with him to a room in the Edgware-road, there they should know.

What did Brunt say then?—He said, that all that went along with him, he would take care they should have something to drink to put them in spirits.

What did the tall man say to that?—The tall man said, he hoped that no man, going on such a piece of business as this, would get drunk; for, in so doing, the man who placed himself in the hands of his enemies would be of no use to nobody.

Did any thing further pass before you left the room?—Not that I recollect.

Was there a cupboard in that room?—There was.

What was kept in that cupboard?—I have seen a sword in it.

Any thing else?—I have seen tar and pitch, and some of this oakum stuff.

The materials for the fire-balls?—Yes.

Any thing else?—Those hand-grenades were kept there till they were removed.

With whom did you go away?—I went down stairs by myself; I was followed by some strange men.

Did you, that evening, go to Cato-street?—Yes.

What did you take with you?—I took a blunderbuss, and a broomstick that was prepared to receive a bayonet, that was Brunt's.

Who showed you the way to the stable in Cato-street?—Thistlewood and Brunt.

Where did you meet with them?—In the Edgware-road.

When you got to the stable, whom did you find there?—On going through the stable, I found Davidson and Wilson; Davidson sitting down, and Wilson standing up.

Did you go up into the loft?—Yes.

Whom did you find there?—I found several men there.

This stable is the first building in Cato-street?—Yes.

Cato-street is a little street turning out of John-street?—Yes.

You enter it under an archway?—Yes.

When you get through that archway you turn to your right, and directly enter that stable?—Yes.

At the further end of the stable you found a ladder, by which you got up into the loft?—Yes.

And in that loft there was a carpenter's bench?—There was a bench in the loft.

Were there any weapons upon that carpenter's bench?—There were.

Of what kind?—I saw pistols and cutlasses.

Was there any light?—Yes, a candle on the bench.

Before any persons came, who afterwards added to your numbers, do you recollect any thing being said about your numbers?—Yes.

What was said?—On Thistlewood looking round, he said, "There were eighteen in the room, and two below stairs."

What did you do with your blunderbuss?—Laid it on the bench.

Can you give me the names of those who were there, or many of them; Thistlewood you have mentioned was one?—Thistlewood was one, Brunt, Ings, Hall, Bradburn, Davidson, Wilson, Harrison, Stranger, Cooper, and Tidd.

Tidd was not there in the earlier part?—I am stating them all now, all that I have any knowledge of by name.

You stated, that Thistlewood said, "There are eighteen of us now in the room, and two down stairs?"—Yes.

How were any of them employing themselves?—They were all preparing themselves with their different arms.

Did Thistlewood remain in the loft or did he go down after you went up?—He went down.

Did you go down?—Yes.

On going, whom did you find below?—On

going down, I found Thistlewood, Brunt, Davidson, Harrison, and Wilson.

Was Ings there?—I cannot charge my memory whether he was below at that time.

Do you remember any thing being said on your going below, or, perhaps, it was when you returned?—Below stairs, when they perceived that I was coming down the ladder, and coming into the stable, they turned themselves round, and expressed themselves all on a sudden what good news they had got; that there were six or seven carriages seen already coming to lord Harrowby's house, and Brunt expressed himself, saying, "What a rare haul we shall have to-night!"

At this time had Tidd arrived?—No.

Did any thing pass about Tidd before we came?—Up in the loft.

You and the others went up into the loft again?—Yes; but Brunt proposed before we went up again, that there should be a double sentry put upon the stable door, and that no one should be admitted unless he could give the counter sign.

Did any thing pass about Tidd not having come?—Up in the loft.

What was said about him?—Some fear was expressed lest Tidd should not come, which Brunt noticed; he came up to the bench, and said there was no occasion of any fear on account of Tidd's not coming, for he would venture his life on Tidd's coming.

Do you recollect Ings saying any thing about dropping or not dropping the plan?—Ings expressed himself like a madman upon this; he said he would rather hang himself or cut his throat, if they talked of giving up the plan now.

Did Thistlewood say any thing?—Thistlewood said, he hoped they would not drop the concern; if they did, it would turn out another Despard's job.

Did Tidd come?—Just after that.

Any body with him?—I do not know; I did not see him come up the ladder.

But you found him among you?—Yes.

Did Thistlewood, after Tidd arrived, mention to you how many there were?—After he had had some little conversation with Tidd, he goes to the stable, and expresses himself by saying, "Supposing lord Harrowby to have sixteen servants in the house, what is that; they would not be prepared, and we should."

Did he say how many there were of you?—This was the time he looked them over.

How many did he make?—Eighteen in the room, and two below stairs.

That was what he said before Tidd came?—Yes.

How many did he make out after Tidd came?—He said there were twenty in all.

Did he say how the business was to be done?—He proposed that there should be fourteen men picked out of the twenty to go into the room.

Did he begin picking out?—The men were begun to be picked out by Thistlewood and Brunt.

When this was doing did you hear any thing below?—After this, on this being done, Brunt introduced a gin bottle, he offers me a glass, and called me among the fourteen. Sometime before this, on Brunt finding the men rather apprehensive they had not sufficient strength, Brunt came up to the table and addressed them in a few words.

What did he say?—He alluded to those persons that were in the room that did not know exactly the preparations they had got; he said, "we have got things here along with us that we can take that will blow their house down over their heads; so bent am I on doing the job, that if there were only eight or nine men, I am determined to go and do it;" he says again, "if there are only five or six that will go, I will be one" and should he find himself in danger, he would take those things with him and set fire to them, and blow the house over their heads all together, and perish all together; just at the time where we left off before, I heard a noise below stairs.

That was after the men were picked out and the gin bottle handed round?—Yes.

All the fourteen men were picked out?—Yes.

Did you hear any words?—Some one comes to the bottom of the ladder, and cries, "Holloa, show a light!" Thistlewood takes a light got from the bench, comes to the stairs and looks down, and seeing who they were, sets the candle down again.

Did you remark any thing in his appearance at that time?—He seemed rather confused.

Upon that who came up the ladder?—The officers ascended the ladder and came into the room.

Do you recollect what either of the officers said on entering the loft?—On entering the loft, to the best of my recollection, they said, "here is a pretty nest of you gentlemen, we have got a warrant to apprehend you all, and as such, I hope you will go peaceably."

After this did either of the officers do any thing in particular?—At this time an officer that was on the ladder, behind the man that had entered the room, cried out, "let me come up."

Did he go forward?—He came forward.

Did you then observe any room going out of the loft?—Those that were on that side of the room, sidled off into a little room that there was.

Did that officer, who came forward, go towards the little room?—I did not perceive him advance into the room.

Did he go towards the door?—No; to the best of my recollection, I think not.

Was Thistlewood one of those that went into this room?—Yes; I saw him go into this room.

What passed upon that?—On this officer coming into the room, the others rushed towards the doorway; at that moment I saw an arm rush forward; at that moment I saw a pistol, and this pistol fired off immediately.

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What became of that officer?—I cannot say that I saw the officer fire; for no sooner was the pistol fired, than the candle was out directly.

I suppose there was a good deal of confusion?—A great deal of confusion.

In the result, did you get down the ladder and into the stable?—Yes.

Did you get away?—Yes.

Did you go home to your lodgings that night?—Directly.

When were you taken up?—On Friday the 25th.

The day but one after?—Yes.

Did you go out after you went home till you were taken?—After I left Cato-street, I went into my room; never did I lay my hand, to the best of my recollection, even on the latch of my door, nor was I out till the officer took me out.

And you have been in custody ever since?—I have.

*Robert Adams cross-examined by
Mr. Curwood.*

I have very little to say to you. I think you told us the last time you were here, that after you had escaped and got home, then it was that you repented of your iniquities?—I did.

And that was the fact, was it? you repented when you got home?—I certainly did; and before that my mind was convinced that I was wrong: I was afterwards more convinced of that, and my mind received a conviction of it.

Did you receive that conviction after you returned to Christianity, or before?—I received it after I had received a conviction of the error of my ways: I can acknowledge Christianity, but before that I could not do it.

You told us the other day that you studied religion a little, and that made you a deist?—I can tell you, that until the time that I received that infernal publication, which I did from Tidd, and I will speak of that before I have done, I had been as careful, I will not say always, but I had been very particular in those things.

And you mean to say you were a good christian till you received that infernal publication, which corrupted you?—I cannot say I was so good as I ought to be.

But you were a christian in profession?—Yes.

Then that book made you a deist?—Yes, it did.

Then, when a halter got about your neck, you became a christian again?—That book, and the principles, Mr. Brunt, the prisoner at the bar, wished to instil into my mind: the sole intent of Mr. Brunt was to knock down the pillars of Christianity altogether, and I can prove it.

And you at one time lent him your aid to knock down the pillars of Christianity?—More to my shame.

You admit that, do you?—I do.

More than I expected. What age were you when you changed your religion?—Between

forty-five and forty-six, and now I am between forty-six and forty-seven.

You are sure you are entirely convinced of your religion now?—I am convinced of this; I have felt an inward satisfaction from what I have done.

You find an inward satisfaction from having slipped your neck out of the halter?—Not on that account; I find a satisfaction in the atonement I have made to my maker, in acknowledging the error of my ways.

In the worst state of your religion, did you feel it morally right to murder any man in cold blood?—I never had an idea of murdering any man, and I thank my maker it was not my wish.

You acknowledge that you were one of a party to do this?—I acknowledge that. Do you wish to know —

Mr. Gurney.—Answer questions, but do not ask them.

Mr. Curwood.—I have no objection to it.

Witness.—I will answer you.

In the worst state of your reprobation, did you think it morally right to murder any man?—I never did; I thought it inconsistent with reason altogether.

Inconsistent even with your reason?—Yes.

Then how came you to join any party that had that for its object?—Well, I do not know that that might not make it worse for the prisoner, it might bring out some unpleasant concerns for his family, and I do not want to load the man further than he deserves, or than is necessary.

It is mercy to the prisoner that restrains you?—I think of them that may be left behind him.

You may have some meaning but I cannot understand it.—To tell you the truth in a few words, I will not pretend to say it was that altogether, my mind was very curious upon Mr. Brunt; I had a doubt upon my mind that that man was not as he ought to be.

What do you mean by that?—After this going from Thistlewood to Carnaby-market, this man substantiated the supposition I had of him; he candidly told me there in Leicester-square, that he met a friend, as he said an acquaintance, this acquaintance came up to him to shake hands, and in pulling his hands from his pockets he grasped his hand, he had got his hand full of pound notes; this was a likely thing; when he gets home he finds himself seven pounds the better; I think if I shook hands with a man I should not find myself seven pounds the better for that; if you wish me to go further, I will do it.

Mr. Gurney.—Confine yourself to the questions asked you.

Mr. Curwood.—The first time you saw Thistlewood was the 12th of January?—Yes.

Before that you have told us there was a design to murder his majesty's ministers?—As

I have not told you all that passed between me and him, I will explain it.

Was it or not on the 2nd of January that the prisoner, in an interview with you in the street, told you of a design to murder his majesty's ministers?—Yes.

And on the 12th of January you were introduced to Thistlewood?—Yes.

You, with ten days consideration, thought proper to join the people that were to commit this nefarious deed?—I joined them from the motives I have told you, and that day convinced me that Brunt was a rogue.

You have told me no motive?—I had a motive, but for the sake of his family I would wish not to enter into it.

How came you to join Thistlewood on the 12th of January to aid in a plot which was communicated to you on the 2nd?—Through the insinuations of Brunt, I joined them.

And you continued until you were taken into custody?—I did.

Attending meetings sometimes twice a-day?—Sometimes twice a-day, I will admit.

Yourself being occasionally the chairman?—Once in the time.

And as you told us, communicating to them that their design was suspected at lord Sidmouth's office?—Yes.

Therefore you did all you could to defeat detection?—I went that morning with three others, to aid me to put a stop to it, with Palin, Potter and Bradburn, one of the prisoners at the bar; if the man had candour enough to acknowledge it, he would say it was so.

Did you not say the other day, that you told them, that you felt it your duty to all to tell that which concerned all?—Yes.

And added, "What would you have thought of me, if I had suffered you all to be taken?"—Yes.

All this you did, meaning honestly to have nothing to do with such a business?—They would not enter into any thing, but Palin wanted to protect me upon it, and to say a word upon it, but as soon as I mentioned this, they were all like a set of madmen upon me.

Palin was a particular friend of yours?—I never saw Palin till the Sunday before, and you never heard me say so.

Do you recollect Mr. Edwards?—Yes; he was there from the beginning, and I have seen Mr. Edwards pull a pair of pistols out of his pocket, and say, he never went without them.

And you saw him very busy in manufacturing the grenades?—Yes.

Was there any regular committee, as you have mentioned a committee?—There was no committee regular, till the Sunday morning, the 20th.

What did you call yourselves?—If there was any particular name given to them, it is more than I heard.

You were chairman of the committee, but you do not know what was the name of it?—Yes, I was very careless of it at the time; I

knew I should, on my plan, be very soon be put out of it.

"You were careless of it?—Yes, I wished to put a stop to it.

How came you not then to report it at proper places?—I wished to save the trouble of being exposed in this sort of way.

You wished to save the trouble of these trials here?—Yes.

And you wished to save the interference of the officers?—Yes; you do not believe I am such a fool as not to wish that.

Mr. Curwood.—No, I do not take you to be a fool I assure you.

Robert Adams re-examined by Mr. Gurney.

You spoke of certain publications which had perverted your mind; what publications were those?—Paine's Age of Reason, and the publications of Carlile.

Eleanor Walker sworn.—Examined by Mr. Gurney.

I believe you are the niece and servant of Mr. Rogers, of No. 4, Fox-court, Gray's-inn-lane?—Yes.

Has the prisoner Brunt lodged in your house for any length of time?—Yes; a twelvemonth it would have been at Easter.

What rooms did he occupy?—The two front rooms on the two-pair of stairs; he lived in one and worked in the other.

Do you remember any back room, two-pair of stairs, being taken by a man of the name of Ings?—Yes.

Who introduced that man to you?—Brunt.

The prisoner at the bar?—Yes.

Was it a furnished room?—Yes.

Did Ings say any thing to you about furniture?—He said he might bring his goods in, in a week or better.

Did he ever bring any goods in?—Not to my knowledge.

Your master keeps a shop?—Yes.

Do your lodgers enter at the shop door, or a back or side door?—A side door.

Does that door lead to the staircase?—Yes.

Can persons, therefore, go up and down those stairs without you in the shop knowing any thing about the matter?—Yes.

Mary Rogers sworn.—Examined by Mr. Gurney.

We understand you live in Fox-court, Gray's-inn-lane?—Yes.

Do you recollect a man of the name of Ings taking a lodging in your house?—I recollect it now; I did not know his name then.

You afterwards found his name to be Ings?—Yes.

How many weeks did he pay you?—Four or five, I cannot be positive which.

One was left unpaid?—Yes.

He paid you four, or possibly five?—Yes.

How much a week?—Three shillings a week.

Do you recollect any evening when you were about putting your children to bed, seeing, any men go up stairs?—Yes, three men.

Was there any thing particular in the person of either of the three?—The middle one I perceived was a black man.

During the time that Ings had this lodging, did you inquire of Brunt who and what he was?—I did.

What account did he give you of him?—He said that he knew nothing of him, only seeing him at the public-house, and hearing him inquire for a lodging.

Did he tell you what he understood him to be by trade?—A butcher.

No furniture was brought in, I believe?—Never to my knowledge.

Lord Chief Baron.—He never slept there, did he?—Never, to my knowledge.

Mr. Gurney.—No bed was ever brought?—No, nothing of the kind.

Joseph Hale sworn.—Examined by Mr. Gurney.

You, I believe, are apprentice to the prisoner Brunt?—Yes.

Did you live with him in Fox-court, Gray's-inn-lane?—Yes.

We understand he had two rooms there, one a living-room, and one a workshop?—Yes.

You slept in the workshop, and he and his wife in the living-room?—Yes.

Do you remember a person of the name of Ings coming there, and taking a room?—Yes.

What room was that?—A two-pair back room.

Who looked at it with him?—Brunt.

After they had looked at it together, did you hear Brunt say any thing to Ings?—Yes.

What?—He said, "It will do, go down and give them a shilling."

How long before that day had you known Ings?—About a fortnight.

That was the first time you remember to have seen him?—Yes.

In whose company had you seen him before that time?—He was with Thistlewood, in Brunt's room.

The evening upon which Ings had taken it, did he come again?—Yes.

Did he go into your master's room?—Yes.

What did he ask for?—He asked Mrs. Brunt for the key.

She had the key then?—Yes.

Did she give it to him?—Yes, I believe she did.

Did he go into it?—Yes.

Who was with him?—A man of the name of Hall, a tailor.

Did they go into it?—Yes.

In the course of that evening, did you hear other persons come into that room?—I believe there were.

Not having seen them, did you hear them come and go into that room?—Yes, I did.

From that time, until your master was taken up, were there meetings held in that room?—Yes.

Can you give me the names of some of the persons whom you saw resort to it?—Yes.

Who were they?—Thistlewood, Ings, Tidd, Hall, Davidson, Bradburn, Strange, Edwards.

Did you see Potter?—Yes.

Did you see Adams?—Yes.

Besides those you have named, were there many others?—There were others at different times in this room, and coming up and down?

Did your master use to be with them?—Yes.

Always, or generally?—Generally.

Upon any occasion, when you passed that room, was the door open?—Yes.

Did you see any thing in the room?—Yes.

What did you see?—I saw some long poles, like the branches of trees, rough-cut.

You mean not trimmed, but with the bark on?—Yes.

How many should you judge?—There were about twenty.

At what time of the day were those meetings that you observed?—Mostly in the evening.

Did you ever hear any work going on in that room?—Yes.

What sort of work?—Hammering and sawing.

Do you mean that you have heard that once, or several times?—I have heard that more than once, I believe.

Your master, I believe, was taken up on Thursday the 24th of February?—Yes.

Did those people call each other by their names, when they were there?—Sometimes.

By what name did they usually call Thistlewood?—Sometimes *T.* and sometimes *Arthur*.

On the Sunday-morning before your master was taken up, was there any meeting in that room?—Yes.

Was that a larger or a smaller meeting than usual?—Rather larger.

Were all the persons you have named to me there?—Yes.

Did they go away all at once, or not?—One or two at a time.

Was your master with them?—Yes.

After the meeting was over, did you see any of them in your master's room, with your master?—Yes.

Who was that?—Strange.

Was there another meeting on the Monday?—Yes.

And on the Tuesday?—Yes.

In the afternoon of Wednesday, was there another?—There were several people up there.

Did all of them go into the back room, or any into the front room?—Some of them came sometimes into the front room.

Do you remember the name of any who came into the front room?—Yes, Thistlewood; and I remember Ings came in once.

Do you remember Strange being there?—Yes.

About what time?—About two o'clock.

Were any persons with him?—Yes.

Which room did they come into?—They came into Brunt's living-room, and then into his workshop.

Do you remember Strange and the others with him doing any thing in the workshop?—Yes, they were flinting pistols.

Do you know who those were that were with him?—No.

How many pistols were they flinting?—There were five or six.

Did they finish them?—No.

What prevented their finishing them?—One of the men said there were persons overlooking them from the opposite house, and Brunt told them to go into the back room.

And they did so?—Yes, they did.

In the course of the afternoon did Thistlewood come out of the back room and ask you for any thing?—Yes.

For what?—He asked me if I could get him a piece of writing paper.

Did you give him some?—I did.

To what place did he take it?—Into the back room.

After that, did Brunt come into the front room to tell you to get any thing?—Yes.

What?—Some cartridge-paper.

How much?—Six sheets.

Did he give you the money to buy it?—Yes.

Did you go and buy it?—Yes.

To whom did you give it?—To Brunt.

What did he do with it?—He took it into the back room.

At about what time, to the best of your recollection, did Brunt leave the back room finally, and come into his own room?—About six.

Was there any person with him?—Yes, there was a person, but I did not know him.

Did he and that person go away together?—Yes.

Before that, had you heard others go down stairs?—Yes.

After he was gone, had your mistress occasion to make tea?—Yes.

Where was her tea-table then?—In the back room.

What did she desire you to do?—She told me to go and get it.

What did you do?—I went and knocked at the door, and got it.

Who gave it you out at the door?—A man of the name of Potter.

When the door opened, did you perceive whether there was any other person there besides Potter?—Yes.

How many do you think?—There were four or five.

Was there a fire?—Yes.

After that, in the course of the evening, did Tidd call?—Yes.

Did he come into your room?—Yes.

Did any thing pass between him and Mrs. Brunt?—Yes.

What?—Mrs. Brunt took him to the sup-

board, and showed him a pike-head and a sword.

What did she ask him about them?—She asked him what she could do with them.

What did he say?—He said if she would give them to him, he would take them away.

Where did he take them to?—Into the back room.

These were in your living-room, were they?—Yes.

After that, did you hear any person go down stairs?—Yes.

As from the back room?—Yes.

To the best of your recollection what time was this?—It was near eight o'clock.

It was after seven, you are sure?—Yes.

After that did any person come and give Mrs. Brunt any message?—Yes.

What was that message?—He told her, that if any persons came, they were to be sent to the White Hart.

Shortly after did any persons come?—Yes.

Were they sent to the White Hart?—Yes.

Did they know their way?—No.

Who showed them?—I did.

Upon your return from the White Hart, did you find any persons at the door?—There was a person came up after I had been at the door a few minutes.

Any body with him?—Yes, some others.

Did you send them to the White Hart?—Yes.

You did not go to show them the way?—No.

Did they appear to know the way?—Yes.

At about what time did your master come home?—About nine o'clock.

Was his dress in the same state as it was when he went, or in what state?—It was dirtier than when he went out, particularly his boots and his great coat.

Did he appear to be in a composed state?—No.

How then?—He seemed rather confused.

What did he say to his wife?—He said, that where he was a lot of officers had been.

Can you give us his exact words; did he tell her any thing, in short, as to the result?—He said it was all up, or words to that effect; that where he had been a lot of officers had come in, and that he had saved his life, and that was all.

Directly after this did any other person come in?—Yes.

You do not know that person's name?—No.

Upon his coming in, what did Brunt say to him?—He shook hands with him, and asked if he knew who had informed.

What did he say?—He said "No."

Did the other man say what had happened to him?—Yes.

What did he say?—He said he had had a dreadful blow on the side, and was knocked down.

From the manner of their speaking to each other, did it appear to you as if they had been together?—Yes.

After that, did Brunt say any thing?—He said "there is something to be done yet."

Upon his saying that, what did Brunt and the other man do?—They went away together.

After they were gone, did your mistress and you go into the back room?—Yes.

What did you find there?—There were several rolls of brown paper in the cupboard, with tar in them.

Any other things?—Yes, there were four large balls made of string, with tar on them.

What do you now understand them to be?—I have heard since they are called hand-grenades.

Any iron pot?—Yes.

To whom did that belong?—To Brunt.

Did you find any bags?—Yes.

Of what?—Made of bits of flannel.

Full or empty?—Two of them were full of something.

Was there any pole or stick in the room?—There was a long pole.

Did your mistress leave them there?—Yes.

About what time did your master come home?—About eleven o'clock.

Did he give you any directions what to do in the morning?—Yes; he told me to get up, and clean his boots.

Did you get up early, and clean his boots?—Yes.

Did he then ask you, whether you knew any place?—Yes.

What place did he ask you whether you knew?—He asked me whether I knew the Borough; I told him "yes."

What did he ask you next?—He asked me if I knew Snow's-field's; I told him "no."

That is a street in the Borough?—Yes.

What direction did he give you?—He directed me to go to Kirby-street, Snow's-fields.

To whom?—To a person of the name of Potter.

What did he tell you you were to take there?—He said he had got some things in the back room for me to take.

Did he and you go together into the back room?—Yes.

Taking with you what?—We took each a rush basket.

What did he do, or direct you to do with respect to those baskets?—He told me to put the things that were in the cupboard into the basket.

Were all the things put into the two baskets?—Yes.

Except the pole which was too large?—Yes, and the iron pot.

After that, was any thing done with either of the baskets?—Yes.

What?—One of them was tied up in a blue apron.

Belonging to whom?—To Mrs. Brunt.

What use had been made of that blue apron before?—It had been made use of as a curtain to the window of that room.

Was the other tied up?—No, we went into Brunt's room to look for something to tie it up, and two officers came in,

And took him?—They did.

Did the officers go into the back room and take the things?—Yes.

Thomas Smart sworn.—Examined by
Mr. Bolland.

Are you one of the watchmen of the parish of St. George, Hanover-square?—Yes.

Were you on duty on the night of the 22nd of February, in Grosvenor-square?—Yes, I was.

Did you observe any persons there?—I observed four about the square.

Was there any thing particular about those men that made you recollect them?—I thought that they were after no good, and I went up to them; two were very tall men and one was a man of colour.

Do you mean a black man?—Yes.

Charles Bissir sworn.—Examined by
Mr. Bolland.

You are a watchman of St. George's?—I am in Grosvenor-square.

Were you on duty in Grosvenor-square on the night of the 22nd of February?—I was.

Was your attention called to any persons particularly?—As I was calling half-past eight o'clock, that would be a quarter before nine, there were two men passed me, one was a man of colour.

What were they doing?—Taking particular notice of the houses.

Of what house?—They took particular notice of lord Harrowby's, and likewise of Mr. Maberley's in Grosvenor-square.

Henry Gillan sworn.—Examined by
Mr. Bolland.

You live at No. 15, Mount-street, Berkeley-square?—Yes.

Do you know the Rising Sun public-house?—Yes.

Where is that?—The corner of Adams Mews, in Charles-street, Grosvenor-square.

Were you in that public-house on the 22nd of February last?—Yes.

While you were there did you see any persons come in?—Yes.

Who were they?—Two men; Brunt was one, and Adams was the other.

Had they any thing to eat and drink?—Yes; a pot of beer and some bread and cheese.

Did any thing pass between you? did you amuse yourselves in any way?—No, nothing more than while we were playing; there was no particular conversation.

What did you play at?—Brunt challenged me to play at dominos, and I played him two games.

What time did they go away?—I do not know; I went away first.

At what time did you go?—I went about ten o'clock.

Mr. Baron Garrow.—You mean ten at night I suppose?—Yes.

Edward Simpson sworn.—Examined by
Mr. Bolland.

You are corporal-major of the 2nd regiment of Life-guards?—Yes.

Do you know the prisoner Harrison?—Yes.

Was he in that regiment?—Yes.

Was he ever at the barracks in King-street?—Yes.

Was he quartered there?—It is not a barrack for men, it is only for horses.

Was he acquainted with those barracks, and the interior of them?—Perfectly so.

Have you any windows, or had you any windows which looked out into the Mews?—Yes; into Gloucester-mews.

Are they walled up?—Yes; they have been since the affair in Cato-street.

Are those windows so situate, that fire-balls could have been thrown into them?—Yes, into one of them particularly.

Was there any hay or straw there?—There was some quantity of straw within about two feet of the window.

Mr. Adolphus.—What do you mean by some quantity?—Perhaps two or three waggon loads.

John Hector Morison sworn.—Examined by
Mr. Bolland.

Are you a journeyman to Mr. Henry Thomas Underwood, of Drury-lane, a cutler?—Yes.

Were you so at Christmas last?—Yes.

Do you recollect any of the prisoners coming with a sword there?—The prisoner Ings brought one to be ground at Christmas.

What sort of a sword was it?—A small one; a scimitar.

Have you seen that sword since?—I have.

In the possession of the officers?—Yes.

What direction did he give with it?—It was to be ground sharp from the heel to the point, and likewise the back of the point to be ground.

Who called for it?—The prisoner Ings called for it, about three days after he left it.

Did he approve of the manner in which it was ground?—Yes.

Did he bring you any one after that?—Yes; in about a fortnight afterwards, he brought me a very long one.

Who called for that?—He called for it himself.

What directions did he give as to that?—He said the first one was ground to his liking, and I was to grind that in the same manner.

Did he leave any name?—He left a name, as I understood him, Eames; the second time I did not ask him his name.

James Aldous sworn.—Examined by
Mr. Bolland.

You are a pawnbroker, I believe?—I am.

Do you know the prisoner Davidson, the man of colour?—I do.

Did he ever pawn with you a brass-barrelled blunderbuss?—He did.

Do you recollect on what day he pawned it?—In January.

Did he redeem it; and if so, when?—On the 23rd of February.

Have you seen that blunderbuss since?—I have; Mr. Ruthven shewed it to me; I believe it to be the same that was pledged and redeemed.

John Monument sworn.—Examined by Mr. Solicitor General.

You are at present a prisoner in the Tower of London?—Yes.

What are you by trade?—A shoemaker.

Where did you live before you were confined?—No. 8, Garden-court, Baldwin's-gardens.

That is near Brook's-market, I believe?—Yes.

Do you remember, at any time, seeing Thistlewood at a person of the name of Ford's?—Yes.

As nearly as you can tell, how far back is that from the time when you were apprehended?—I suppose near three months.

In consequence of your meeting Thistlewood at Mr. Ford's, did Thistlewood afterwards call upon you?—Yes.

How long was that after you had seen him?—I believe about a fortnight or three weeks.

Did he call alone, or in company with any person?—In company with Brunt.

The prisoner, John Thomas Brunt?—Yes.

Were you at home alone at that time, or in company with any person?—My mother and my brother.

What is your brother's name?—Thomas Monument.

After Thistlewood had been in your room for some little time, did Thistlewood make any proposal to you to go out?—He said he wished to speak with me.

In consequence of that, did you and Thistlewood go out of the room?—Yes.

Leaving Brunt in the room with your brother Thomas Monument?—Yes.

When you went out of the room with Thistlewood, will you tell us what Thistlewood said to you?—Yes; he said that great events were at hand, that people were everywhere anxious for a change, that he had been promised support by a great many men who had deceived him, but now he had got men who would stand by him.

What further did he say?—He then asked me whether I had any arms.

What did you say to that?—I said, "no;" he said that every one ought to have arms; "all of us," says he, "have got arms; some," says he, "have got a pistol, some have got a pike, and some have got a sabre." He said I could buy a pistol for about four or five shillings. I told him I had no money to buy pistols; he then said he would see what he could do.

Do you recollect any thing more that passed?—I do not recollect any thing more.

Did you return again into the room?—Yes.

Did you find Brunt there?—Yes.

Did Thistlewood and Brunt go away together?—Yes.

Do you recollect Brunt calling upon you on Tuesday the 22nd of February?—Yes.

Did he call alone, or in company with any person?—In company with Tidd.

Were you alone in your room when he called, or in company with any other person?—My brother was with me.

Thomas Monument?—Yes.

What did you say?—I said, on his coming, "I thought I had lost you;" and he said "the king's death has made an alteration in our plans."

What did you say to that?—I asked him what plans; he said there was to be a meeting the following evening up at Tyburn-turnpike, where I should hear all the particulars; he then turned to Tidd, and asked him whether he should give me the word.

What said Tidd to that?—Tidd said, yes, he supposed there was no danger.

Upon that did he give you the word?—Yes; he told me when I came to the place, if I saw any people about to say *b, u, t*.

What was the place?—Tyburn-turnpike; he did not tell me any particular place, and if they were friends they would answer *t, o, n*; he said he should be at our house again in the morning to tell me more about it, and at what time it was to take place.

By the morning, do you mean the next morning?—Yes, the Wednesday morning.

Did he call again the next morning?—No, he did not call till about half-past four o'clock.

Did he come alone?—Yes.

What did he say when he came there?—He called me down stairs.

Was your brother Thomas Monument, there?—Yes, he called me down stairs, and told me I must go with him in half-an-hour; I told him I could not go so soon as that; he asked me "why?" I told him I had got some work to do that must be done; he asked me at what time it would be done; I told him about six o'clock; he said he could not wait so late as that, so that I must go with Tidd, the person whom he brought the day before, and he told me where he lived.

Where was that?—In Hole-in-the-wall Passage, leading to Dorington-street.

Did you, in consequence of this, go to Tidd's house?—Yes.

About what time?—About half-past six.

Did you find Tidd at home?—Yes.

What did he say to you?—He said he had been waiting for some more people to go with him that he expected would be there, but if no one else came before seven o'clock, we should go together.

Did any persons arrive before seven o'clock?—No.

Then when seven o'clock came, what did

Tidd do?—He went to a corner of the room, and took a pistol.

What did he do with it?—Put it in a belt that he had got round his body, underneath his great coat.

What else did he do?—He took about six or eight pikes, wrapped up in brown paper.

Do you mean pike-handles or pike-heads?—Pike-heads; and a staff about four feet long, with a hole in one end of it.

Was that hole adapted to receive one of the pike-heads?—Yes.

After he had equipped himself in this way, what did he do?—He went down stairs.

Did you go with him?—Yes, into Brook's-street, and from Brook's-street into Holborn, and along into Oxford-street.

Did he tell you what you were going to do?—No.

What passed between you?—When we were in Holborn, he gave me the pike-handle, and told me to carry that; as we were going along Oxford-street, I think it was, I asked him to tell me where we were going to; he said I should know when I got to the place; I had asked him before we came out of the room what place it was up at Tyburn-turnpike we were going to; he said it was at a mews up by the Edgware-road.

In going up Oxford-street, he told you you would know what you were going to do when you got to the place?—Yes; I asked him whether we were going to the House of Commons; he said no, there were too many soldiers there; I then asked him again where we were going to, and he told me we were going to Grosvenor-square.

Did he say to whose house in Grosvenor-square?—No, he did not; I asked him whether any one in particular lived in Grosvenor-square; he said there was to be a cabinet dinner there.

Did any further conversation that you remember, pass between you before you got to Cato-street?—No, I do not recollect any.

Did you go under an archway?—Yes.

Were there any persons under that archway?—Two persons stood under that archway.

Had they any conversation with Tidd?—There were some few words passed which I could not understand; he was before me.

How far is the stable from the archway?—It is directly under the archway; you turn to the right hand.

Did you go into the stable?—Yes.

What did you see when you first went into the stable?—There were three or four men there.

Did Tidd go into the stable with you?—Yes.

Were those men in the stable armed?—I cannot say.

Was there any light in the stable?—Yes, one.

Did you go up the ladder?—Yes.

That is at the further end?—Yes, on the left hand.

You went up into the loft?—Yes.

Did you find people there?—Yes.

How many might there be in the whole, do you suppose, below and up stairs?—I should have supposed, from the appearance, two or three-and-twenty; but some one spoke soon after I got in about counting them, and Thistlewood said there was no occasion for counting them, there were five-and-twenty.

Was there any thing like a table or carpenter's bench?—Yes.

What was upon that?—A quantity of swords and pistols.

Was there a light there?—Yes, there was one light; I do not know whether there were any more.

You observed but one light?—No, I do not recollect any more.

Was that light on the bench?—Yes.

After you got up into the loft what passed?—There was a man in a brown great coat, sitting on a low bench, on the other side of the carpenter's bench.

Near the ladder?—No, on the other side; he was speaking of the impropriety of going to lord Harrowby's; that was the first time I heard the name I think; he spoke of the impropriety of going to lord Harrowby's with so small a number as five-and-twenty men. Thistlewood said, that number was quite sufficient, for there only wanted fourteen men to go into the room, and supposing that lord Harrowby had sixteen men servants, that number would be quite sufficient; the man in the brown coat said, "When we come out, of course there will be a crowd of people round the door, how are we to make our escape?" Thistlewood said, "You know the largest party of us are already gone." Davidson then said,—

Davidson, the black?—Yes; he told him not to throw cold water upon their proceedings, for if he was afraid of his life, he might go, they would do without him; and Brunt said, sooner than they should go from the business they were about, he would go into the house by himself and blow them all up, if he perished with them; says he, "you know we have got that that can do it," and after that the man in the brown great coat said, that though he did not like going with so small a number, yet as they were all for it, he would not be against it; he then proposed that they should all put themselves under the orders of Thistlewood.

That man proposed?—Yes; Thistlewood then said, that every one engaged in it would have the same honour as himself; he then proposed that the fourteen who were to go into the room should volunteer from the persons that were there assembled.

In consequence of that proposal of Thistlewood's, what was done?—About twelve or thirteen in a few minutes volunteered, and those that were to do that were to go to the other side of the room; the right hand side going in.

Can you give us the names of some of those that so volunteered?—Tidd, Brunt—

Brunt, the prisoner?—Yes; Davidson, Wilson—

Ings?—No; I do not recollect seeing him there.

Hall?—I do not know Hall's person.

Do you know Harrison?—I was brought to the Tower with him, but I did not know him before, till I saw him at the Secretary of State's office.

These you have mentioned were among the twelve or thirteen?—Yes.

What took place about this time?—Thistlewood stepped down stairs, and he came up stairs again, and said, that they had received intelligence that the duke of Wellington and lord Sidmouth had just arrived; I do not recollect any thing more passing till the officers came up.

When the officers came up, what took place?—They came into the room; I did not see them till there were two or three in the room; they told them to surrender, that they were officers; they told them there was a guard of soldiers below.

You yourself were taken into custody when the soldiers came?—Yes, I was taken into custody up stairs.

*John Monument cross-examined by
Mr. Curwood.*

Have you been reading Paine's Age of Reason?—I have read it.

Did that turn you from Christianity?—No, it did not, because the bishop of Llandaff's answer was with it.

You had, then, an antidote?—Yes; after I had read that, I got a person to lend me the bishop of Llandaff's answer, which I have now.

Then you mean to represent yourself as having been a Christian all along?—I cannot say but that that book shook my faith; but I kept on reading the bishop of Llandaff all along with it, till I saw that he completely answered him.

And it had no ill effect upon your principles?—No.

What political society have you belonged to?—I have not belonged to any.

You never mixed at all in those political meetings?—Yes, I was at two.

You took no part with them?—Yes, at two meetings.

And at only two?—At only two.

How long have you known Brunt?—I never saw him till Thistlewood brought him.

How long have you known Thistlewood?—I never saw him, except at the public meetings, till I saw him at Mr. Ford's.

Having known very little of Thistlewood, and nothing of Brunt, you consented to go with Brunt and Tidd, not knowing what you were going about, as I understand you?—No, I did not.

You saw Tidd arm himself?—Yes.

And you accompanied him?—Yes.

As you went up Oxford-road, you asked him whether you were going to the House of Commons?—Yes.

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Seeing him going armed, and to meet others, and supposing you were going to the House of Commons, what did you suppose you were going about?—I naturally thought they were going to attack it.

You thought they were going to murder the members of the House of Commons, that is a delicate way of putting it; did you think they were going to murder the members?—I did not know; that was the reason I asked.

Still you went with him?—Yes, I did.

Having reason to believe that something was intended?—Yes.

But you had no reason to believe what was going to be done till you got to Cato-street?—No.

Now, remember what you told me the other day, "He told me it was a cabinet dinner and then I knew what he was going about?"—I certainly thought it could be for no other purpose but to destroy the persons there.

And you, a Christian, whose principles had never been shaken, joined them in it?—I was forced to join it, I could not get away.

What forced you to Tidd's, and forced you along the streets?—Fear.

You told us just now, that a man in a brown coat was told he might retire; why did not you retire?—I should have been loth to take him at his word.

It was fear brought you into it, and fear kept you in it?—Yes, it was.

*Thomas Monument sworn.—Examined by
Mr. Solicitor General.*

You are the brother, I believe, of the last witness?—Yes.

Do you remember Thistlewood at any time coming to his house?—Yes, he did; he came one evening.

Did he come alone, or in company with some person?—He came in company with Brunt.

With Brunt the prisoner?—Yes.

After they had been some little time in the room, did your brother go out with Thistlewood? what did Thistlewood say?—He asked if he could speak with him.

In consequence of that, did Thistlewood and your brother go out?—Yes, they did.

Did Brunt remain behind in the room?—Yes, he did.

About how long, as well as you can recollect, were Thistlewood and your brother out of the room?—I do not suppose they were out above two or three minutes.

After they returned into the room, did Brunt and Thistlewood go away together?—Yes, they did.

Do you remember on Tuesday the 22nd of February Brunt calling again upon your brother?—Yes.

Did he call alone, or in company with any person?—He called in company with a man of the name of Tidd.

Tell us what passed when he came in; what did your brother say to Tidd?—When Brunt

came in, my brother said, "I thought I had lost you;" there was something passed concerning the king's death. Brunt said, that the king's death had made some alteration in their plans. My brother made answer, and asked him what plans; he said, they had different objects in view.

Do you recollect any thing further?—No; I recollect Brunt asking Tidd, whether he should give us an outline of the plan; I do not know whether Tidd made any answer, I did not hear; but Brunt then said he would give us the pass-word, which consisted of the letters *b, u, t*; that we were to meet on the following evening at Tyburn turnpike at six o'clock, and if any of their party were there, they would answer *t, o, n*.

Were you asked to go?—Yes; I was asked to go.

Did you refuse or consent?—I did neither the one nor the other; I suppose they expected me, but they chiefly directed their discourse to my brother; I suppose they did not know me.

Do you remember on the following day, the Wednesday, Brunt calling again on your brother?—Yes, he called between four and five o'clock; he could not go just then.

Tell us what passed; what did Brunt say?—He only asked him if he was ready to go; we were busy at work; my brother told him he could not go then; and Brunt told him when he was ready to go, he was to call in Hole-in-the-wall Passage on Tidd, and he would take him.

After Brunt had said this, did he go away?—Yes, he did.

What time did your brother go out?—It was nearly seven o'clock, as nearly as I can recollect.

Did you yourself go?—No, I did not.

Your brother did not come home again?—No; I never saw him afterwards, till he was in custody.

Mr. Solicitor General.—If your lordship will permit me, I will ask John Monument one question which I forgot.

Lord Chief Baron.—If you please.

John Monument called again.—Examined by *Mr. Solicitor General.*

Do you remember being taken to Whitehall?—Yes.

Were you secured in any way?—I was kept with about two or three officers.

Were you handcuffed to any person?—When I was taken to Whitehall the first day?

Either day?—I cannot exactly say; I know I was put into a room by myself.

Did any conversation pass between you and Thistlewood?—Yes, that was the last day; I thought you were asking as to the first day.

Was Brunt in the room then?—Yes.

Were the other prisoners in the room?—Yes.

They went for the purpose of being ex-

amined?—Yes; we were all put in the room together.

Can you recollect what Thistlewood told you?—He told me, when I came to be examined before the privy-council, I was to say that it was Edwards led me into the meeting, that it was through Edwards I came there.

What did you say to that?—I said, how can I tell that falsehood when I never saw the person; he said it was of no consequence; if you are asked what sort of a person he was, you may say that he was not much taller than yourself, of a sallow complexion, and dressed in a brown great coat.

Do you remember being seated round the room at Whitehall?—Yes.

What did Thistlewood say?—He told me that Edwards was the person that betrayed them, and to pass it round among the other prisoners; I did not like to do it; I told him I should be noticed, and he leaned over to another prisoner.

Who was that?—Bradburn was sitting next to me, but Bradburn would not take notice of what Thistlewood said.

Did he lean past for the purpose of communicating it beyond?—Yes.

Did you ever see Edwards?—No.

Thomas Hiden sworn.—Examined by *Mr. Gurney.*

I believe you have carried on the business of a cow-keeper and dairyman, in Manchester-mews?—I have.

You have now the misfortune to be in prison for debt?—I have.

When were you arrested?—A week ago, last Wednesday-morning.

You were taken in execution for debt?—Yes; I had a law-suit, and lost the cause.

Do you know the prisoner Wilson?—Yes, I do, perfectly well.

Did Wilson make any proposition to you to be one of a party to do any thing?—A few days before the 23rd, he asked me if I would be one of a party to destroy all his majesty's ministers.

Did he say where they were to be destroyed?—He said at a cabinet dinner; he told me they had got all things ready, and were waiting for a cabinet dinner, and that they had got such things as I never saw.

Did he say what sort of things?—He said, large things bound round with tarpaulin and cords, and filled full of nails and iron and other things, and that the strength of them was very strong.

Did he say what effect they would have?—He said if they were lighted, they would heave up one of the walls of the houses on the other side of the way in the street that we were walking in.

Did he say what more they intended to do?—He said they were waiting for a cabinet dinner; that they meant to set fire to some houses, and by keeping the town in a state of confusion for a few days, it would become

general; he said those things were to be put into the room where the gentlemen were at dinner.

The things with the tarpaulin?—Yes; and they meant to set fire to lord Harrowby's house.

What did they say would be the effect of putting them into the room where the gentlemen were at dinner?—He said that all who escaped the explosion were to die by the edge of the sword, or some other weapon.

Did he mention to you the names of any persons whose houses were to be set fire to?—The duke of Wellington's, lord Harrowby's, lord Sidmouth's, lord Castlereagh's, the bishop of London's, and one more that I cannot remember.

Did you tell him you would be one?—He told me they should depend upon me for making one, and I told him I would.

Before the 23rd, did you write a letter to my lord Castlereagh?—I did.

Did you go to his house?—I did.

You did not get access to him?—I did not.

After you had done that, did you go and watch lord Harrowby out of his house to Hyde-park?—I did; I went two or three times; at last I saw a gentleman mount his horse, and go towards the park.

Did you deliver to him the letter you had written to lord Castlereagh?—I did.

Is that the letter? (*showing a letter to the witness.*)—This is the very letter.

I do not ask you what passed between his lordship and you; the next day did you see Wilson again?—Between four and five o'clock in the afternoon, I was going up Manchester-street with one of my little girls, he said, "Hiden, you are the man I want to see."

What more did he say?—I said, "Wilson, what is there going to be?" and he said, there is a cabinet dinner to-night at lord Harrowby's in Grosvenor-square; I asked him where they were going to meet; he told me I was to go up into John-street, and at a public-house the corner of Cato-street, the sign of the Horse and Groom; and there I was to stop in the public house, or to stop at the corner at the post till I was shoved into a stable close by.

What did you ask him next?—I asked him what time I was to meet him, and he said I was to meet them at a quarter before six, or by six o'clock at furthest; and if I did not make haste, the grand thing would be done before I came.

Upon this, did you ask him any further questions?—I asked how many there were to be, and he said between twenty and thirty; I asked him if that was all the party that was in Cato-street, and he said there was another party; one party in Gray's-in-lane, another party in the Borough, another in Gee's-court, or in the city, I am not certain which.

Did he say any thing more about Gee's-court?—He told me I had no occasion to be alarmed, all Gee's-court was in it.

What description of persons live in Gee's-court?—I believe them to be almost all Irish, what I know of them.

It is in Oxford-street?—One end of it runs into Oxford-street.

Did he say any thing about the Irishmen?—He said the Irishmen were all in it, but they would not act till the Englishmen began first; as the Englishmen had so often deceived the Irish, they would not begin before the English had.

Did he mention what places those parties were to go to?—He said our party was to go to lord Harrowby's, and do the grand thing, and then all parties were to retire and meet some-where about the neighbourhood of the Mansion-house.

Did he mention what was to be done in other places?—He told me there was two pieces of cannon that would be very easily taken by knocking in a small door.

Did he mention any others to be got elsewhere?—He said there were four others, at some Artillery-ground—I do not remember where—which were easily to be got at by killing a sentry.

Did you then leave him?—I then, I believe, left him.

Did you go to John-street that evening?—I did.

At about what time?—Between six and seven o'clock, I believe it to have been near seven when I got there.

When you got near the gateway by the Horse and Groom, whom did you see?—When I got near the gateway, I there met Wilson and Davidson the coloured man standing near a post.

Had you known Davidson before?—Yes.

And conversed with him?—Yes, many times.

I do not, at present, ask you what had passed between you; what did Wilson say?—Wilson said, "You are come;" I said, "Yes, I am come, but I am behind my time;" I told him that I had to get some cream, which I was obligated to go and get.

Did Davidson then say any thing?—Davidson asked me if I was going in; he said if I was going in, Mr. Thistlewood was in there.

Did you ask them any question?—I asked them what time they would go away from there, as I must go and get some cream; and he told me they meant to leave that place about eight o'clock.

Did he tell you what you were to do, if they should be gone?—They told me, if they were gone from there before I came back, I must follow them to Grosvenor-square, the fourth house from the corner, at the bottom, on the other side, I should find them.

Thomas Hiden cross-examined by Mr. Curwood.

How long have you known Wilson?—Four, or five, or six months.

You must have been very intimate with him, I should think?—I have been a good deal with him, at a master tailor's, a friend of mine that worked for me, Mr. Clarke's.

I observed, the very thing he asked you was, whether you would be one of a party to kill

his majesty's ministers?—He did; he asked me, whether I would be one of a party to destroy his majesty's ministers.

And you told him you would?—I did.

Had you been at those political meetings?—I had never been to any but two; I went to what they called a shoemakers' club twice.

I do not ask as to shoemakers' clubs?—I was induced by my friend Mr. Clarke to go with him to it on a Sunday-evening.

And you found yourself mistaken when you got there?—There was nothing particular that evening.

You went again?—Yes, another Sunday night; and those were the only two times I was ever there.

You never did attend those private meetings?—I never was at a private meeting in my life.

You will swear that?—Yes.

Do you know a man of the name of Bennett?—I do, perfectly well.

What is the Bennett you know?—I know one Bennett a bricklayer.

Did you ever persuade him to attend those meetings?—I never persuaded him; I said one evening, when Mr. Clarke called on me, "I dare say Mr. Bennett will go with us."

Did not you tell him something was to be done for the good of your country, and persuade him to go?—I said perhaps he would go; there was Mr. Clarke as well as me.

Did you not persuade him to go, and tell him something was to be done for the good of this country?—I cannot swear that I did, nor that I did not; I asked him to go down to the shoemakers' club with us.

Look at the jury?—I can look at them.

Did you not persuade him to go, and tell him that something was to be done for the good of the country?—I cannot say positively that I did.

Will you swear you did not?—I asked him, whether he would go down with my friend Clark and me to a club; we were all neighbours together.

He will be called to contradict you if you deny it; did not you persuade him to go and tell him that something was to be done for the good of the country?—I cannot say; I asked him if he would go with me.

Will you deny that you told him something was to be done for the good of your country?—Upon my oath, I do not think I did.

Will you deny it, or admit it?—I can say no more than I recollect.

You will not deny it, nor admit it?—I cannot say further.

The first time that you saw Wilson was the 23rd of February?—It was, till I came into this court.

It was not till the 23rd that you knew the meeting was to be in Cato-street?—Yes, it was before the 23rd I knew there was to be a meeting.

Was it told you where till the 23rd?—No, it was not.

You did not know it till the 23rd?—I did not, till the afternoon of the 23rd.

And you made your communication to Lord Harrowby on the 22nd?—I have not said that.

Mr. Gurney.—No, he has not fixed the day.

Mr. Carwood.—It was before the 23rd?—Yes.

You did not communicate to his lordship the place where the meeting was to be?—I did not.

You wrote the letter yourself?—I did.

Take a pen and write a word or two?

Mr. Gurney.—It should be at the table.

Mr. Carwood.—I am told he cannot write at all; I may be misinformed.

Witness.—There is my name—(handing in the paper)—is that enough? I am not much of a scholar.

Mr. Carwood.—Yes; it is a mistake certainly; I was told he could not write.

Brunt.—My lord, I desire that witness may leave the court.

Wilson.—Turn him out of court.

[The prisoners hissed the witness as he passed the bar.]

The Earl of Harrowby sworn.—Examined by Mr. Attorney General.

You are a privy councillor, and one of his majesty's ministers?—I am.

Be good enough to enumerate the noblemen and gentlemen who compose what is called the cabinet?—My lord chancellor; the earl of Westmoreland, lord privy seal; the earl of Liverpool, first lord of the Treasury; Mr. Vansittart, chancellor of the Exchequer; my lord Castlereagh, secretary of state for the foreign department; lord Sidmouth, secretary of state for the home department; my lord Bathurst, secretary of state for the colonial department; lord Melville, first lord of the Admiralty; the duke of Wellington, master-general of the Ordnance; Mr. Robinson, president of the Board of Trade; Mr. Bragge Bathurst, chancellor of the duchy of Lancaster; Mr. Canning, president of the India board; Mr. Wellesley Pole, master of the Mint; and the earl of Mulgrave.

Has it been usual for those noblemen and gentlemen to give what are called cabinet dinners?—It has.

In consequence of the death of his late majesty, had those dinners been suspended?—They had.

Had your lordship intended to give a cabinet dinner on the 23rd of February last?—Certainly.

How long before that day had the cards of invitation been issued by your lordship?—I believe on the Friday or the Saturday preceding; probably on the Saturday.

Did your lordship, before the 23rd of February, see the witness who has been just examined, Hiden?—I saw him in the Park, near Grosvenor-gate; he is the same person whom I have just seen examined.

On what day was it?—On Tuesday, the 22nd of February.

At what time of the day?—I believe between two and three o'clock, but I am not quite positive.

Did he give you any letter addressed to my lord Castlereagh?—He did.

Is that the letter? (*showing a letter to his lordship*)—That is the letter.

Had your lordship any conversation with him at that time?—I had.

Did you ask him for his name and address?—I asked him whether he had put his name and address in the letter, as he had expressed a wish to have further communication with me; he told me he had not, and he then gave me his card, containing his name and address.

When did you see this person again?—I saw him again by appointment the next morning, in the ring in Hyde-park.

You appointed to meet him there to avoid observation?—As he appeared to me to be afraid of continuing the conversation with me when I met him at Grosvenor-gate (having appointed to meet him at Grosvenor-gate), when I came there I told him to go on to the ring, and I met him there on the Wednesday-morning.

Was the dinner given at your lordship's house on the Wednesday?—It was not.

Did the preparations for the dinner go on until the evening of the Wednesday?—The preparations for the dinner went on as if it had been to take place.

At what hour did your lordship apprise your servants that it would not take place?—I wrote a note from the earl of Liverpool's, where I was dining, between seven and eight o'clock on the Wednesday-evening, to inform my principal servant that the dinner would not take place.

I forgot to ask your lordship whether those noblemen and gentlemen, whom your lordship has named, are privy councillors?—They are.

They are all principal servants of his majesty in the administration of the government?—Yes, they are privy councillors, and form what is called the cabinet council.

*John Baker sworn.—Examined by
Mr. Attorney General.*

I believe you are a butler to the earl of Harrowby?—I am.

Do you remember, by his direction, sending out cards of invitation to a cabinet dinner to be had at his house on the 23rd of February?—I do.

On what day were those cards of invitation issued?—The 18th or the 19th; I believe on Saturday the 19th.

When did you first receive intimation that the cabinet would not dine at lord Harrowby's house?—About eight o'clock on the Wednesday-evening, or it might be ten minutes after eight.

Up to that period, had the preparations for the dinner gone on in the expectation that the

cabinet would dine there?—Every thing entirely; nobody had an idea to the contrary.

Do you remember whether on that night there was any party at the archbishop of York's, whose house adjoins lord Harrowby's?—I believe there was; I saw carriages stopping at the door.

About the dinner hour?—It was rather before the dinner hour that was to be at lord Harrowby's; it was between six and seven o'clock.

Lord Chief Baron.—The archbishop of York lives the next house to the earl of Harrowby's?—Yes, the next house coming out at the door.

*Richard Munday sworn.—Examined by
Mr. Littledale.*

Where do you live?—At No. 3, Cato-street.

Do you know a stable in that street?—Yes.

Do you remember, on the 23rd of February last, seeing any body go into that stable?—Yes.

What time of the day was it when you first saw any body go there?—About three o'clock in the afternoon.

Whom did you see then?—I saw Harrison in the stable.

Whom did you see afterwards?—I came home from work about half after four, or twenty minutes after four, and I saw Davidson walking up and down the archway that leads to the stable.

Where did he go to after he had been walking up and down?—I do not know; I went in and got my tea, and came out again; and I had occasion to go to the chandler's shop to get some coffee, and after that I returned and got a pint of beer, and after that I had occasion to come out opposite to the stable, and I saw Davidson pass with two candles in his hand.

What time might this be?—A quarter after six.

Did he do any thing with those candles?—Yes, he went and lighted one of them, and took it into the stable.

How many people did you see go in and out of this stable?—I saw two going in and three coming out as I passed for the coffee and back again.

Did you see more people than those at any time?—Not at that time; after Davidson, I saw two go in, and then one go in.

Did you observe, in the course of the day, whether any thing had been put up?—Yes; when I came home to watering in the afternoon, I heard a knocking, and looked up, and they were nailing up a coarse bread bag, or something of that kind, to prevent any person looking in; I thought it was to keep out the coldness of the weather.

Do you know whether that stable had been occupied shortly before that?—Mr. Firth removed his cows just before Christmas.

Had it been unoccupied from that time?—Yes, it had.

George Caylock sworn.—Examined by
Mr. *Littledale*.

Where do you live?—At No. 2, Cato-street.

Did you see any person on the 23rd of February, who attracted your attention?—Yes; a man of the name of Harrison.

Where did you see him?—I saw him go into the stable.

Did he say any thing about the stable?—He said he had taken two chambers, and was cleaning them up.

Did you see any persons go into that stable that evening?—Yes; I suppose from twenty to twenty-five I saw go in and out.

George Thomas Joseph Ruthven sworn.—Examined by Mr. *Bolland*.

You are a constable at the public office at Bow-street?—I am.

Were you directed, on the 23rd of February last, to go to Cato-street, Edgware-road?—I was.

At what time did you get there?—About six o'clock, when I first went.

Did you go alone, or with any party of police officers?—I had three then.

Were you afterwards joined by more?—I was.

Did you go to the Horse-and-Groom public-house, when you first went?—I did.

When you were in that house, did you see either of the prisoners at the bar come in?—Cooper and Gilchrist.

Did Cooper bring any thing with him?—A stick.

What sort of a stick?—A mop-stick.

Did he leave that stick?—He did.

Did you take possession of that stick?—I did.

You have it?—I have it.

After this did you go into any stable?—I did.

At what time did you enter the stable?—About half-past eight, as near as can be.

Upon going in, what did you observe?—I observed a man with a gun on his shoulder, and a sword by his side.

What was he doing?—Walking backwards and forwards, appearing as a sentinel.

Do you know at all who that man was?—I do not.

What did you do?—I called on the party following me to seize that man, and take care of him.

What did you yourself do?—I went up a ladder in the stable.

There was a ladder from the stable communicating with the room above?—There was.

When you reached the top of the ladder, what presented itself to you?—I saw several men; I saw a bench, and heard the clattering of arms.

Did you perceive any arms?—I did.

Of what description?—Swords and pistols.

Did any of the officers go up with you?—

They did.

Which of them?—Ellis and Smithers.

Did you see any body in the room whom you knew?—Yes.

State who that person was?—Thistlewood.

Where was Thistlewood?—He stood on the right of the bench, as we went up stairs.

Had you known Thistlewood before?—I had.

Did you say any thing on having gained the loft?—I did; I said, "we are officers, seize their arms."

Did Thistlewood do any thing upon that?—He did; he drew a sword from the table, and retired into the small room on one side.

With his sword in his hand?—Yes.

Was there any light in the first room, in the loft?—There was.

Was there any light in the small room?—There was.

What did Thistlewood do with that sword?—He stood fencing with it; shaking his arm round in that sort of way.

Whilst he was so fencing with it, did Smithers advance towards him?—He did.

On Smithers advancing to him, what did Thistlewood do?—He put his arm forward in that manner (*describing it*), and stabbed him.

What became of Smithers?—He fell back, saying, "Oh, my God!" or, "Oh, I am done;" I do not know which.

He was killed?—He fell against me, he died directly, I believe; I heard no more.

What further passed?—A pistol was fired, and the lights were put out.

What happened after the lights were put out?—In the room where Thistlewood was, I heard a voice cry out, "Kill the b——rs, throw them down stairs."

What did you do upon hearing that cry?—There was a rush towards the stairs; I joined in the cry, and got down with them.

You joined in the cry, "Aye, kill them all," and got down with them?—Yes.

On going out, did you meet the soldiers?—I did, in John-street.

Did you return?—I did.

Upon your return, did you see either of the prisoners at the bar?—I did; Tidd.

Where was Tidd?—He was then about eight or ten feet, I should think, not much more from the stable-door.

What was he doing?—He appeared to me endeavouring to get away.

Had he any thing in his hand?—I did not observe it then, till I said to somebody "Seize that man;" he then lifted his arm as if to fire, and I saw he had a pistol in his hand.

Did you seize him?—I laid hold of the arm in which he had the pistol, and swung him round, and fell upon a dung heap, and he upon me.

Did any one release you from that situation?—The soldiers were up directly, and the pistol went off.

Was Tidd taken into custody?—He was.

Did you search him?—I did.

State how he was accoutred, and what you

found upon him?—He had a light-coloured leather belt round him, and two ball-cartridges.

Where were they?—In his pocket.

Did you go to the Horse and Groom?—It was in the Horse and Groom where I searched him.

Was Bradburn brought in?—He was.

Did you search him?—I did.

How was he accoutred?—He had a string tied round his waist four or five times, and he had six ball cartridges in his pocket, and three loose balls.

A string was tied round his waist as a belt or sash?—It would act as a belt to carry any thing in.

Where were the ball cartridges?—In his breeches pocket.

Where were the bullets?—In his breeches pocket.

Was Davidson brought in?—He was.

Was Davidson searched in your presence?—He was searched, while I was searching the other, I believe.

Was Wilson brought in?—He was.

Did you search Wilson, or not?—I did not.

Did Davidson say any thing when he was brought in?—He did; he damned and swore against any man that would not die in liberty's cause; he gloried in it; he likewise sung part of the song, "Scots, wha ha' wi' Wallace bled."

Did Wilson say any thing?—He said it was all up; they might knock him on the head now.

Did you return to the loft after this?—I did.

In what state did you find the loft?—I found several soldiers there, and some of the police there.

Any of the prisoners?—Four of the prisoners.

After the candle had been put out in the loft when you made your escape, was there any firing in the road or from the loft?—Many shots, I should think between twenty and thirty.

From the loft, and in the road?—Some of the shots appeared fired out of the loft; the noise was not similar to those within.

Out of the window?—Yes.

Did the shots proceed from the party that you saw in the loft?—I have no doubt of it.

Mr. Baron Garrow.—Not from your party?—Certainly not.

Lord Chief Baron.—Did they shoot into the stable, any of them?—I am not aware.

Had any of your party gained the loft besides yourself, Ellis, and Smithers?—I was not aware myself of any more.

Did you fire any shot?—I did not; I attempted, but the pistol missed.

Ellis did fire once?—I have understood he did; I do not know it myself.

And Smithers not at all?—Certainly not; I can answer for him, for he was rather before at this time on my right.

James Ellis sworn.—Examined by

Mr. Attorney General.

I believe you are a conductor of patrol at the public office in Bow-street?—I am.

Did you go with Rathven on the evening of the 23rd of February to Cato-street?—I did.

Were you with him when he entered the stable?—As close to him as I could possibly follow.

When you came into the stable, did you see any men in the stable?—I did.

Where did you see any one?—There was one man between the foot of the ladder and the door, with his face towards the door.

Did you observe whether he had any belts on?—He had two belts across his shoulders, white ones.

Had he any thing in his hand?—In his right hand he had a carbine or short piece, something of that kind; and at his left side, a long sword.

Did you observe, whether he was a man of colour or not?—On passing him, I turned him half-round, and looked in his face, and observed he was a man of colour.

What sized man?—A tall stoutish man.

Have you seen the prisoner Davidson?—I have; I believe it to be him.

Did you see any other person in the stable?—There was another near the manger, in the furthest stall.

Near the ladder?—Between the foot of the ladder and the manger of the further stall.

Did you observe what sort of person that was?—I had a very slight view of him, but he had a brown coat on, and appeared shorter than the man of colour, at least a dark-coloured coat.

I believe Rathven mounted the ladder first?—He did.

And you followed him?—I did.

As you were going up the ladder, did you hear any person from the stable say any thing by way of alarm to the persons above?—I did; I heard some person below say, "above men;" the last words were men, but I cannot be certain to the expression.

What did you observe, when you got up the ladder into the loft?—I observed a number of men falling back between the bench that stood in the room, towards the wall on the side of the room.

Did you observe what was upon that bench?—I observed there were lights upon it.

Did you observe any thing else; were there any arms?—There were some arms, but what I cannot say.

Do you know Thistlewood?—I knew him now.

Did you see him in the loft when you got up?—I did; he was at the end of the carpenter's bench, with two or three men, near the door leading into the little room.

Had he any thing in his hand, or did you see him take any thing in his hand?—He had a sword in his hand.

Did he move from the place where he was when you came?—Not in the first instance; not materially so; he held the sword at me, and shook it in his hand in a threatening attitude.

What did you do upon that?—I desired him to desist, or I would fire at him, at the same time presenting my pistol.

What did he do upon that?—He backed into the little room.

He retreated backwards into the little room?—Yes.

Did you see Smithers?—Yes, at that time he gained the top of the ladder.

Smithers followed you then?—Yes, up the ladder.

And by that time he gained the top of the ladder?—Yes.

Did Smithers advance towards Thistlewood?—He went straight forward, to the door of the little room.

In the direction of the little room?—From the top of the ladder to the little room is straight.

He was advancing towards the door?—Yes.

Upon his advancing, what did Thistlewood?—Made a push with his sword, and stabbed him in or near the right breast.

What happened upon that?—Upon that, I saw Smithers throw his hands up in this way [*describing it*], his head fell back on his shoulder, and he exclaimed, "Oh, my God!"

What did you do?—I instantly fired at the person who did it, Thistlewood.

Your fire did not take effect?—It did not.

Upon that were the lights extinguished?—At the moment that I fired, the lights were putting out; the flash of my pistol was the last light that I saw.

What ensued upon that?—Smithers fell past me, slightly against me; and a rush was made towards the ladder, and I was forced down the ladder.

Upon your getting down the ladder, did you go down by the stable into Cato-street?—I went to the door, when two shots, I believe, were fired from some part of the stable, and passed me in the door-way.

They were fired towards the door?—Yes.

And passed you as you were gaining the door?—Yes.

Was there any firing from the window of the little room?—Yes, there was; but after I saw those two shots, I saw a man fire from under the ladder in the stable up towards the manger.

In what direction did he fire?—Up towards the manger of the furthest stall; I observed he was a tall man, but I could not see any more.

Was he coming down the ladder?—He was standing with his side under the ladder in this direction, and firing into the stall.

Lord Chief Baron.—Towards your men?—Towards the manger in the stall; I do not know who were there.

Mr. Attorney General.—On your gaining the stable-door, did you find any firing from the small room?—Yes; some shots were fired out of the window of the small room.

In what direction?—Towards the stable door, as if they were pointed at me.

Did you assist in taking any of the prisoners?

—I heard the cry of "stop him," and saw a man of colour, and pursued him, and took him.

He ran in the direction towards Queen-street?—He did.

Was that Davidson?—That was Davidson.

Did he make any resistance?—He made a cut at me on my first closing in upon him, but afterwards he made no resistance.

What had he upon his person when you took him?—He had a carbine at his side, and a sword in his hand.

Was that carbine slung to him, or had he it in his hand?—I do not know whether it was or not; I almost think it was slung to him.

What did Davidson say upon his being taken?—I do not recollect any precise words at that time.

I believe you assisted in taking some of the other persons?—When I went back to the stable, after leaving Davidson with two of our people, I tied three or four of them together in the stable.

Do you know who those were?—Wilson and Monument were two of them; but the others I am not any way acquainted with.

William Westcott sworn.—Examined by *Mr. Gurney.*

You are a Bow-street officer, I believe?—I am.

On the night of the 23rd of February, did you accompany the other officers to Cato-street?—I did.

We understand that Ruthven and Ellis and Smithers went up the ladder?—Yes, they did.

Did you observe any person in the further end of the stable?—I did.

Who did that turn out to be?—Ings.

I believe you had some conflict with Ings?—Yes, I had.

While that was taking place, did you hear a confusion and firing in the loft?—I did.

And the officers came tumbling down?—They did.

After they came down, did you observe any person come down that you knew?—I did.

Who was that?—Thistlewood.

What did he do, or attempt to do to you?—He presented a pistol at my head.

Did he fire at you?—He did.

Did you throw up the pistol he had at all?—I put up my left hand to save my head.

Did the ball go through your coat?—Yes; and wounded my hand, and went through my hat.

Did he do any more to you?—I made a thrust to seize him as he fired, and I received a blow on the right side of my head, and I fell, and he made a blow at me with a sword, and rushed out of the door, and escaped.

You afterwards went up stairs, and found poor Smithers dead, and the arms there?—Yes, afterwards.

John Wright sworn.—Examined by *Mr. Gurney.*

You are a Bow-street patrol?—Yes.

You accompanied the other officers to Cato-street?—Yes.

I will not go through the particulars; did you afterwards assist in securing Ings?—Yes.

Did you search him?—No, I did not.

Did you see him searched?—No, I did not.

Had you any conflict with any man in the stable?—Yes, with the prisoner Ings; I took a knife and a sword from him.

Was that while your brother officers were in the loft?—It was.

What kind of knife?—A butcher's knife.

Any thing particular with the handle?—Tied round with wax end.

After that, I believe you were knocked down, and he escaped from you?—I was knocked down, and received a stab in my side.

He was taken shortly afterwards?—He was taken that night.

Joseph Champion sworn.—Examined by Mr. Littledale.

I believe you are one of the Bow-street patrol?—Yes.

Were you in Cato-street on the evening of the 23rd of February?—I was.

Amongst others, do you remember seeing Ings there?—I do; he was standing at the foot of the ladder when we went into the stable, and as Ruthven was going up the ladder, he cried out take care above.

Was Westcott endeavouring to secure him then?—Yes; and as I was proceeding up the ladder I saw Westcott knock him down; and, as I was going up the ladder I looked behind me, and saw the lower part of a man's body in the hay-rack.

At this time, were there any shots fired?—Several from up stairs; and imagining this person was going to fire at us, I proceeded to the rack to beat him on the legs, to drive him back into the loft again.

Who was that?—I do not know.

After this, did you see any body in Cato-street with a sword?—I saw Thistlewood running up Cato-street waving his sword as he went along; during this time Ings had escaped, and I pursued him up John-street into the Edgware road, where I found Ings in the possession of Brooks and the watchman; I assisted in securing him, and took him to Mary-le-bone watch-house, there we searched him.

What did you find upon him?—On taking off his great coat, he had two haversacks across his arms, one on each arm, slung by cross-belts.

What did you find in his pockets?—There was a tin case with some loose powder in it: three pistol balls, a pistol key, and the case of a large knife.

Lord Chief Baron.—In one of the haversacks you found something?—A tin case of loose powder.

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Lieutenant Frederick Fitzclarence sworn.—

Examined by Mr. Bolland.

You are in the Coldstream-guards?—I am.

On the 23rd February were you applied to, to go with a picquet to Cato-street?—I was.

What time did you reach it?—About eight o'clock.

What did you first perceive on arriving there?—In John-street I met a police-officer, who cried out, "Soldiers, soldiers! the doorway, stable!" I ran on, and met two men at the door, one of whom presented a pistol, and the other made a cut at me; I parried his cut, and exchanged several cuts, but seeing the body of the picquet coming up, he ran into the stable; I followed him; and on entering the stable, I ran up against a man who cried out, ["Do not kill me and I will tell you all;"] I gave him over to the picquet, and went into the stable into one of the stalls, where I took another man, I gave him also to the soldiers; I then led the men up the ladder into the hay-loft, where I found three, four, or five men, and a quantity of arms on the table; the soldiers came up and took them all into custody.

Did you see any person lying upon the floor of the loft?—Yes, I did, he was rising; half lying and half rising.

Did you find any person?—Yes, I did; on lifting my feet, I touched the feet of poor Smithers.

Samuel Hercules Taunton sworn.—

Examined by Mr. Gurney.

You are an officer of Bow-street?—Yes, I am.

On the morning of Thursday the 24th of February, did you go to the lodgings of the prisoner Brunt?—I did.

Did you apprehend him?—I did.

At about what hour?—Between seven and eight in the morning.

What room did you find him in?—In a front two-pair of stairs room.

You had, I suppose, another officer with you?—There was.

Did you leave him in the front room in custody of that officer, and go and search the back-room two pair of stairs?—Yes, I did.

I need not take the enumeration of that now, but did you find a quantity of fire-balls, grenades, gunpowder and other things?—I did.

In two baskets?—In two baskets.

Did you, upon that, return to his room, and question him upon the subject of these things?—I did.

What did he say?—He denied having that lodging; he said he had nothing to do with that room.

Did you ask him about these things?—I did; he said he did not know any thing of them.

Did you ask him who had had that room?—No, I did not at that time; I sent down for the landlady, Mary Rogers,

She came up?—Yes.

Did you ask her any questions in his presence?—I did.

What did you ask of her?—I asked of her, who occupied that room; she answered, that some man had taken it in company with the prisoner, Brunt; I inquired of the prisoner, who is that man; he denied having any knowledge of him; he had only seen him once in a public-house.

Did he say any thing more about him?—No; that was all that passed.

You took him into custody and took him away?—Yes, I did.

Did you then proceed to the lodging of Tidd?—I did so.

Did you there find some more grenades, and cartridges, and bullets?—I did.

Mr. Gurney.—That is all I propose to ask him at present; the enumeration we need not go through twice.

Lord Chief Baron.—No.

Daniel Bishop sworn.—Examined by Mr. Gurney.

You are an officer of Bow-street?—I am.

Did you apprehend the prisoner, Thistlewood?—I did.

When?—On the 24th of February.

That was Thursday, the morning after the Cato-street affair?—Yes.

At about what time?—Between ten and eleven.

Where?—At No. 8, White-street, Little Moorfields.

At a house kept by whom?—Kept by Mrs. Harris.

Where was his own lodging?—In Stanhope-street, Clare-market.

Mr. Baron Garrow.—Does his family reside there?

Mr. Gurney.—Did his wife and son live in Stanhope-street with him?—I understand they did.

Mr. Gurney.—That will be all, except the production of the ammunition and the arms.

Lord Chief Baron.—Gentlemen, there is no other evidence to be produced but the arms, and as we cannot possibly conclude to-night, and you must necessarily therefore be kept for the night, it is better to rise now than have the arms and a great deal of powder produced now; we shall meet to-morrow morning at nine. [Adjourned to to-morrow morning, at nine o'clock.]

SESSIONS HOUSE OLD BAILEY.

TUESDAY, APRIL 25th, 1820.

The Prisoner was set to the Bar; William Davidson, Richard Tidd, James William Wilson, John Harrison, Richard Bradburn, John Shaw Strange, James Gilchrist, and Charles Cooper, being placed behind him.

George Thomas Joseph Rathven called again.—Examined by Mr. Gurney.

Do there now lie upon the table the arms found at Cato-street?—There do.

Except some of the pike-staves?—That dozen of pike-staves.

I observe these pike-staves are ferruled; except some from which, owing to the greenness of the wood, the ferrules have fallen off?—Yes, they were all ferruled at the time they were found.

And holes bored for the purpose of receiving something?—Yes.

Mr. Baron Garrow.—Were they taken in the loft?—In the loft, or in the stable.

Mr. Gurney.—Did you also find these pike heads, some of them being bayonets, and some of them old files?—The soldiers found them.

Mr. Gurney.—We have here, my lord, every person who found each article, but my learned friends do not exact our calling them. These holes are made for the reception of such things as the pike heads?—Yes. [One was screwed into a staff.]

What quantity of other things were there?—I have not the list.

This is the list; thirty-eight ball-cartridges, fire-lock and bayonet, one powder-flask, three pistols and one sword, with six bayonet spikes and cloth belt, one blunderbuss, pistol, fourteen bayonet spikes and three pointed files, one bayonet, one bayonet spike and one sword scabbard, one carbine and bayonet, two swords, one bullet, ten hand-grenades, two fire-balls, one large grenade and bayonet, rope ladder, one sword-stick, forty ball-cartridges and one bayonet, three loose balls: all these things were found in the loft?—Yes.

Found in the pocket of Bradburn, six ball-cartridges, three balls and some string put round him to act as a belt; a pistol that Tidd fired, a pistol that Wilson attempted to fire, blunderbuss in the stable, sword, belt and scabbard in the stable, one pistol in the stable, another pistol in the stable, one sword in the stable, twelve sticks with ferrules; in the pocket of Tidd, two ball-cartridges, and round him a leathern belt; two ball-cartridges facing the stable, and ten ditto in Newnham-street, one musket cut down; and one sword from Davidson, one haversack, cross belts, one pricker, bayonet, scabbard, cartouche-box and a belt round his body; two haversacks, one belt, and tin powder case from Ings, four pistol balls, one pistol key, and a knife case from Ings; one haversack, containing seventeen ball-cartridges, three balls, one pistol flint, one pricker, one worm for drawing cartridges, one knife and a turn screw, one stick cut to receive a bayonet, left in the public-house?—Yes; that is correct.

Have you the knife?—That is it. [producing it.]

Has that the appearance of a butcher's knife?—It has.

Do you find the handle worked round with wax-ends?—It is.

Have you also the knife case?—Yes.

Put that also into the knife-case. [*It was done.*] Does that belt appear to be of the same cloth as the case for the knife?—It does.

Mr. Baron Garrow.—This is not a case made by a cutler, but a cloth case?

Mr. Gurney.—Yes, my lord, it is made of blue cloth; the witness seeing it by dark took it for black. [*Several of the articles were handed to the Jury.*]—Produce the two haversacks found on the person of Ings, and slung to his shoulders. [*They were handed to the Jury.*] Produce now the hand-grenades? [*The witness produced the same.*]—This is the large one.

That has a fuse in it, like the other, I believe?—It has.

Three have been opened?—Yes.

And you now produce the remainder here?—There have been four opened.

John Hector Morison called again.—Examined by Mr. Gurney.

You have spoken to two swords having been brought by Ings to you to be ground and sharpened; look at that, and state whether that is one of them?—Yes, that is one.

What were the instructions he gave you respecting it?—To grind it at the edge from heel to point, and likewise at the back of the point.

And you had it done?—Yes.

That was at Christmas Eve?—Yes.

Samuel Hercules Tamnton called again.—Examined by Mr. Gurney.

You mentioned yesterday, that upon searching the two-pair back room in the house in which Brunt lodged, you found two rush baskets?—Yes.

Produce those two rush baskets?—These are the two baskets. [*producing them*].

What does that basket contain?—Nine different papers of tar, rope-yarn, and things of that description.

Are they what you call the fire-balls?—They are; and there were some steel filings.

Lord Chief Baron.—For what purpose were the steel filings?

Mr. Gurney.—We suppose them to have been the result of the filing which had taken place. Supposing files had been filed to a sharp point, would that operation have produced the filings you have before you?—I should think it would.

Have you now the basket which was tied up in a blue apron?—Yes.

What have you in that basket?—There are four grenades, three papers of rope-yarn, tar, and more ingredients, two bags of gunpowder, of one pound each.

Produce those bags of gunpowder?—These are they; and five empty bags, a paper of powder, one leathern bag with sixty-three balls in it [*producing them*].

Those were all you had in the basket?—Yes.

Besides that, was there an iron pot?—Yes.

Does that iron pot appear to have been used for the boiling of tar?—It does.

Did you also find a pike-handle?—I did, this is it [*producing it*].

These were all the things you found in Brunt's?—Yes.

Are the four grenades you found there the same as those which are upon the table?—Exactly the same.

You stated yesterday, that after you had apprehended Brunt, and found those things, you went to the lodgings of Tidd?—Yes.

Produce the things you found at Tidd's; in the first place give me the haversack [*It was produced.*]—What articles are there in that haversack?—There are 434 bullets, 171 ball-cartridges, 69 ball cartridges without powder, a brown paper parcel with three pounds of gunpowder.

Produce the coarse canvas cloth. [*It was produced.*]—In that what did you find?—Ten grenades.

Are they of the same description as the other?—They are.

All fitted with fuses?—Yes.

Eleven bags of powder, one pound each?—Yes.

How many empty bags?—Ten.

What else?—A small tin powder flask, with powder; sixty-eight bullets; four flints, and twenty-seven pike handles, which are these [*producing them*]; and these, all of them, had iron ferrules round them the same as this, but some have dropped off in consequence of the greenness of the wood.

Besides that, did you find a trunk?—Yes, this is it.

What did that trunk contain?—965 ball cartridges, done up in parcels of five each.

George Thomas Joseph Ruthven called again.—Examined by Mr. Gurney.

When these several fire-arms were found in Cato-street, were they for the most part loaded?—They were.

Were the charges drawn, in order to produce them here?—They were.

Were they loaded with ball?—They were; one of the guns with largish shot.

Edward Hanson sworn.—Examined by Mr. Gurney.

You, I believe, are serjeant in the Royal Artillery?—Yes.

Take in your hand some of these flannel bags of powder; what do you call them?—They are in imitation of a six-pound cartridge.

A cartridge for a six-pounder?—Yes.

For a piece of Artillery to carry six pounds?—Yes. This is gunpowder. I have examined some of these before, and there was exactly a pound of powder in each bag.

Is it very good powder?—Yes; it is exactly the same as the hand-grenades were made of.

In the Artillery you make up those bags, not in flannel?—No, it is a twilled serge; it is rather stronger.

This would answer the same purpose?—It would.

Look at these fire-balls; have you examined them before?—Yes.

Of what do they appear to be composed?—There is a difference in some of them; they are in general oakum, tar and rosin; one I have examined I found without brimstone; all the others I have examined were with brimstone.

Would any admixture of steel filings increase the effect of those fire-balls, by increasing the heat?—No; the steel filings would be part of the composition of the priming of the fuse.

Would these fire-balls, if they were thrown into a window of any house or building of any kind, be likely or certain to produce fire?—Yes; they would set any wood on fire.

What length of time would they burn?—Three or four minutes, according to their size.

If thrown into the hay-loft of the King-street barracks, do you think they could possibly avoid being burnt?—If there was forage there, it would have produced a conflagration most undoubtedly.

Take one of these grenades to pieces; there is an outer coating of rope-yarn?—Yes.

[The witness opened one of them in the presence of the Jury.]

A Jurymen (Mr. Aldersey).—Is that the usual outer coating?—Yes, they are all the same.

Mr. Gurney.—Is that the usual outer coating of hand-grenades of military men?—No, not of ours; that is iron metal.

Have these the appearance of having been made by military men?—No, by no means.

But though not so constructed, are they so constructed that they would have a great effect?—Yes; the more hard they are bound the greater will be the explosion and the effect resulting from it; this I have come to is a piece of paper cemented; here are some nails; here are a number of pieces of iron.

What is that you have come to?—Dry oakum.

Cemented at the bottom?—Yes.

Now you have come to a tin box, or case?—Yes.

There is a fuse to it?—Yes.

Is that fuse brazed in?—Yes.

Break it off and see whether the case is filled with gunpowder?—[The witness took out the fuse and poured out the powder.]—Here is a number one round shot in it, with the gunpowder.

What quantity of gunpowder does that contain?—One I before opened contained three ounces and a half, and this appears to be the same.

That is as much powder as you use for a nine-inch shell?—Yes, rather more.

Would it be sufficient to explode the grenades you have taken to pieces?—Yes, it would.

Do you find several pieces of iron in that?—Here are twenty-five pieces in number.

In the event of explosion, would those pieces of iron fly about a room like so many shot?—Yes they would.

And if thrown into a room in which there were fifteen gentlemen at dinner, in your judgment, would it most likely prove destructive to the lives of many?—Yes, it would, no doubt.

What length of time would it take from the lighting of that fuse to the explosion?—Nearly half a minute.

Mr. Attorney General.—My lord, that is the case on the part of the prosecution.

[The Solicitor General handed up a note to the Court, and their lordships consulted together.]

Lord Chief Baron.—Mr. Solicitor-general; we shall certainly take an opportunity of noticing this circumstance of the sheriffs concerning the students, who are not allowed to come to the place which ought to be kept entirely for them.

Sheriff Parkins.—Certainly, my lord, it is my desire that it should be so; I have wished it should be so from the commencement; it is not my fault.

Lord Chief Baron.—I do not say there has been a fault any where.

Sheriff Parkins.—Yes, there has been a fault; an authority has been exercised, but not with my authority at all, but against my authority.

Lord Chief Baron.—This box is for them, and you find it so laid down in Mr. Justice Foster's publication, and also by Mr. Justice Kelynge; we must insist that it shall be attended to; accommodation must be made for those gentlemen.

Mr. Baron Garrow.—I was very many years ago in the habit of attending here when a student, and it occurred to us that we were interrupted, on which I had conference with other gentlemen, and we proposed this regulation, which was immediately made,—that every gentleman who presented himself with his certificate that he was a student of one of the Inns of court, and in his gown, should be admitted, and no other person admitted, unless there was ample room for the students. I remember one occasion on which an application was made to the court, and I was the author of that application.

A Student.—We are very much obliged to your lordship.

Lord Chief Baron.—It is of great public importance, that gentlemen who study the law should have access to the court.

[All who were not students were immediately compelled to retire from the students-bar.]

DEFENCE.

Mr. Curwood.—Gentlemen of the jury: If

you had been secluded for the last week from a knowledge of what has been passing in this court, some at least of the observations which I shall feel it my duty to make to you, would be unnecessary. But as you know well, not only from your knowledge, but from what has been proclaimed to all the world through the medium of the public press, that this is the third time that it has been my duty to rise to address juries, on nearly similar occasions; the Court and you must feel, that however oppressive the duty was in the first instance, it has become more oppressive by what has since taken place.

In reviewing (and I assure you I have done it with anxious consideration) my own conduct in these causes, the course that suggests itself as fit for me to pursue in this particular case (and I adopt it upon the best consideration I am able to give the matter) appears to me to be not to attempt to address you in what may be called a speech, but rather to consider myself in your situation, as a jurymen, and calmly, deliberately, and with the utmost care and attention, weigh the evidence that has been given in this case, and see how far it applies to the issue which you have to try. Whatever may have passed on former occasions, whatever former verdicts may have been, I am sure I need not tell you, that you are to judge of this case according to the impression which the evidence in this case shall make on your minds; and it is not without some degree of confidence, that I hope, upon a due consideration of the evidence, you may find yourselves justified in giving a verdict of not guilty in favour of this prisoner. Because I confess that when I first heard the evidence which has been now thrice repeated, detailed, it produced a conviction in my mind, which upon more serious consideration (and I have turned it over in my mind repeatedly) I do not think it deserves. And if any of you should think as I do, notwithstanding what has passed on former occasions, you will be bound to act upon your present amended judgments, and not upon your former. However, before we can apply the evidence, it is necessary that you should consider the charge to which that evidence is to be applied; and you will consider (I will not go now into the details of the indictment), that the charge you have to try, is whether the prisoner is guilty or not guilty of facts which amount to high treason; it is not enough for you to be convinced that he meditated to commit a very atrocious crime; it is not enough for you to be convinced that he meant to raise a great commotion in the town; it is not enough even for you to be convinced that he meditated that most horrid crime, as every man must feel it to be, the assassination of all his majesty's ministers. If you believe all this, and still do not believe there is evidence in the case which satisfies your minds that he meditated rebellion, or in the language of the record, that he conspired to levy war against his majesty in his dominions, for the purpose

of compelling him by force to change his measures, you will, notwithstanding all the horror you must feel at his conduct in other respects; in the discharge of your duty to your country and to yourselves, find him not guilty of this charge.

The two charges in the indictment which we now understand are relied upon, are, that the prisoner conspired to depose his majesty; and that he conspired to levy war against him. Those are the charges in question, and are both made treason by a late statute, the 36th of his late majesty's reign. For many, very many years, the law of treason did not include those offences; for by a statute, to which all Englishmen have looked up with veneration as the best protection of their liberties, I mean the famous statute of Edward the 3rd, treason was so correctly defined, as consisting in acts and not in intentions, that my lord Coke, in commenting upon that statute, calls it a blessed statute, because it defined men's duties as to treason so clearly and so accurately, that no man could fall into the guilt of treason by any thing like implication or inference; and that statute also contained another very important provision, for it declared, not only that there must be specific facts to constitute the guilt of treason, but a man must be *provably* convicted thereof. And the same learned writer expends a whole section in commenting upon the word *provably*, which word means, as he says, that he must be clearly, unequivocally, undeniably, by evidence that cannot be doubted, convicted of their offences, and not by the testimony of foul and guilty accomplices, or by that sort of testimony which juries do and must and ever will receive with the greatest doubt; but he says, it must be by testimony clear and unequivocal: and although this indictment is not framed upon that statute, yet you will bear in your minds the spirit of the law upon that subject; and though you have a most serious charge (founded, it is true, upon another statute) to try, yet you will expect the treason to be proved according to the spirit of the treason law in this country, namely, by evidence, pure, unequivocal, uncontaminated, and by witnesses on whose testimony no suspicion can be thrown; or if you are obliged to resort to a witness of that sort, you will expect him to be confirmed by witnesses who are pure and unsuspected.

Although at various times since the passing of that admirable act (in the diseased times of the state I may say) subsequent laws have produced many enactments of new treasons, yet it has ever been the effect of the British constitution, when it has revived from those convulsions, and has recovered the vigour of health, to sweep away all the new-fangled treasons, and to revert to its ancient and wholesome law on this subject, and I trust it may again.

But to the law as it is. Now, as the charge upon this indictment is the levying war, or rather a conspiracy to levy war, it is your duty

to consider first (supposing you believe all the evidence), whether the facts there stated would amount to a levying of war, if the intention had been carried into effect. What shall or shall not be said to be levying war is a pure question of fact, which is entirely in the judgment and discretion of a jury to decide upon. I do not know, except in some few cases, that it has been decided precisely what shall or what shall not amount to a levying of war. But this I know, that a very great and a very learned judge, and one most eminent not only for his legal knowledge but for his piety, his honour, and his wisdom in all respects, has given an opinion upon it; I mean lord Hale, and his opinion ought to have great weight, for he, gentlemen, was a judge of such great integrity, as well as learning, that living in the time both of Cromwell and of Charles, he was employed by both of them. His learning was so extensive, and his integrity so valued, that even the usurper called him into his employ, although he had the boldness to tell that usurper, that he doubted the legality of his commission, and constantly refused, on that ground, to sit on the crown side of the court at the assizes. But even with that protest, and in those times, Cromwell would not lose his services, and thought his character would add lustre to his judicial bench. And afterwards, when he was called into the service of his legitimate monarch, he equally opposed himself to the tyranny of the monarchy, and was the fast and firm friend of the liberties of his country. That learned judge, in commenting on constructive treasons,—and here perhaps I should explain a little more what the law has called constructive treasons; and I take leave to say, that constructive treason is a departure from the common sense and the plain language of that admirable statute of Edward the 3rd:—Constructive treasons are the inventions of servile lawyers in bad times (I must of necessity recur to things I have said before); to support the oppressive designs of wicked statesmen. While we adhered to the letter of that famous statute of which we have been speaking, no man could raise a question what was levying of war, or what was not; the facts themselves would speak for themselves; but when you come to constructive levying of war, you do not know whether in time every common riot may not be considered as a levying of war.—Lord Hale goes through a great number of instances, which have been held to be constructive levyings of war; and many of which, in common sense, would amount to nothing more than great and enormous riots; and he has these remarkable expressions: he says “Every riot is not a levying of war, because if so a great number of acts of parliament would be useless; but” he says “these last” (alluding to certain instances which he quotes) “have been decided to be a levying of war; but we ought to be very careful indeed how we let in constructive treasons, for no man knows where they will end;” indeed, gentlemen, no man

does know where they will end; “those circumstances,” he says, “have been decided to be a levying of war, and being so decided we must acquiesce in them.” Now I pray you, mark that expression, we must acquiesce in them; when a man says he acquiesces in a thing, he means that he gives a reluctant consent to it; it is not convincing to his mind, but the circumstances compel him to give a reluctant assent; and he says, “if any new case applies, it is safer to go to the wisdom of parliament, than further to extend constructive treasons.” Now the way in which I mean to apply the doctrine of that great man, who in the words of wisdom thus lamented the extension of law by construction, is this: if my learned friend, the Attorney-general, cannot show you a precedent exactly in point, where the courts of law have ruled that a riot, or an attempt of this kind, has been distinctly held to be a treason and a levying of war; then, I say, you will follow the advice of that great and learned judge, and not for the first time enlarge constructive treason, by declaring the circumstances in evidence to be a levying of war, which never before, that I know of, has been so held. For if this be so, every resistance to lawful government may be considered a levying of war; and every riot in a play house, where the guards are called in, and a resistance is made to them, may be held to be high treason, by resisting the king's troops. Such being the destructive consequences of constructive treason, whatever you may think of the moral conduct of a person, do not enlarge the law of constructive treason, but fulfil your duty and say, it is not treason.

Having considered what the charge is, which you are to try, of course the next thing is, that you should consider the character of the evidence by which it is supported. And my learned friends on the other side admit that they are obliged to resort to the evidence of accomplices. And here in order that I may set myself and my learned friend right in one respect in which we have been misrepresented, it may be said and supposed (because it has been supposed already) that we have argued, an accomplice is not to be believed under any circumstances; that we have asserted, that an accomplice is totally incredible in every thing he states. Now, I never meant so to argue, nor did I understand my learned friend so to argue; but we said in discriminating the evidence of an accomplice, you will consider how far you can believe him; it does not follow that every fact that he has stated from beginning to end is false; but we say, if he is not confirmed in any of that part of his testimony which applies to the charge of high treason, and in which he ought to be confirmed, to substantiate the charge on this indictment, although he may be confirmed as to some circumstances, and you believe him to be so confirmed, still you will be warranted in pronouncing a verdict of not guilty, unless you felt that he was confirmed up to that point

where the crime of treason begins. Perhaps no accomplice that ever came into a court of justice, invented a story false in all its particulars; and if he is to be believed in every particular, because he is confirmed in some particulars, why then the necessary consequence would be, that an accomplice may build upon a narrow foundation of truth, a proof of the grossest system of falsehood. And yet, if one or two of his immaterial facts are confirmed, you are therefore to believe him in all the system of falsehood he builds upon that narrow foundation. What therefore I would have you most particularly to bear in mind, will be to search whether you can find the accomplice confirmed by pure testimony, in any of those facts from which you can infer the crime of high treason: if you find him confirmed in other respects, and do not find him confirmed in any one of those respects which go to the guilt of treason, then our argument is, that he is not confirmed in that necessary and material part, which would warrant you in returning a verdict against the prisoner.

In considering how far an accomplice is confirmed, it is not immaterial also to consider how far he might have been confirmed, supposing that he spoke the language of truth; and if from any source or means whatever you see and know that there are other witnesses, who might confirm him, and who are not called to confirm him, that of itself must necessarily raise in your minds a strong suspicion that if those witnesses were called they must have told something which would detract from or perhaps totally destroy his credit. If, therefore, you should see that there are other witnesses on the part of the Crown that could confirm him as to that which is most material, namely as to those facts which constitute the guilt of high treason, and they are not put into the witness-box, judging safely and wisely, you will say you will not convict on evidence which is unconfirmed, and which might be confirmed if true.

It may be said there are also witnesses who might be called by the prisoner to contradict the accomplice if his evidence be false; and if they are not called, it must be taken that his evidence is true.—If you do not find those witnesses called, I admit you will ask yourselves why are they not called? Is it in the power of the prisoner to call them? Could he easily obtain them? But if in answer to that question, you find that he could not bring his witnesses here without a halter about their own necks, is it probable, you will say, that he could use sufficient influence to induce witnesses to come forward under those circumstances to give evidence in his favour? It is not to be expected that any process of the court, or any process that is issued to bring witnesses, or even any inducement of friendship will prevail upon men to come forward and put themselves into so perilous a situation. I observe my learned friend, the Solicitor-

general, makes a note of what I now say, from which I suppose he feels the argument may be easily answered; it might be so, if these were witnesses of perfect innocence, but I do not put them as witnesses of perfect innocence though they may not have been guilty of high treason, they may have been guilty of enough to make it a fearful thing for them to appear here. And they will not come here either to disclose their own crimes, or hazard their personal safety; though if they had come and had admitted their own crimes, they might safely swear they had participated in nothing which amounted to the crime of high treason. There is that peculiarity in this case—and it is the misery and wretchedness of the thing—that a man standing here in my situation, as advocate for the prisoner, cannot go to the jury as in a case of perfect guilt or perfect innocence, but here I am bound to admit there is proof of much guilt and enormous crime, at least a meditation of guilt and enormous crime, though I think I am justified in contending, as I do contend, that it is not the guilt of high treason.

As I said before, in the execution of my duty to-day, I shall endeavour to reason upon the evidence as though I were one of yourselves. I hope I shall not be betrayed even to raising my voice from that pitch necessary for you to hear me. You will consider if you please what the plot is, that is, the plot of treason, and who it is that states the main parts of it, indeed all of it which constitutes the treason. All the particulars which relate to treason are stated by the witness Adams alone. You have had before you three witnesses, who speak distinctly to certain parts of the plot, and of certain things to be done: Adams, Monument, and Hiden. I admit they all speak to so much of the transaction as is confirmed by the state of things in Cato-street; but there is a material distinction to be taken between what passed at Cato-street, and what is supposed to have passed in the course of the prior deliberations at Ings's committee-room. I hope I shall be able to convince you that all that passed at Cato-street is confirmatory only of so much of the supposed deliberations as related to that horrid deed, the assassination, which I am afraid was in contemplation; all that passed there is confirmatory of that statement only, but I say is not confirmatory of the supposed deliberations to overthrow the government; that I say rests solely upon the testimony of Adams. Now who is Adams?—Let us pause, and consider the manner in which he represented himself. I take his character according to his own account of it. That he was implicated in the whole of the plot whatever it was, cannot for a moment be denied; he avows that he unhesitatingly mixed with those conspirators whose object was cold-blooded assassination (when I speak of the thing I always tell you I want words to express the degree of horror every man must feel at that dreadful plot of assassi-

nation of which we have heard so much); but he, without remorse, joined in it; he next betrays his companions. That does not add much, I think, to his recommendation, for amongst the most depraved of mankind there is such a contempt of treachery, that those who have lost every other bond, still have something like a sort of feeling of honour to those who have embarked with them even in a common cause of wickedness, that it is the greatest reproach to such a man that he betrays his companions. What is he in religion? A man who at the age of forty-five avows to you that he forsook his religion and disbelieved the truths of Christianity; then you have before you a traitor to his king, the betrayer of his companions, a man who has apostatized from his religion, and denied his God; this is the man upon whose testimony the whole of the facts which constitute the treason rest.

Then what is the story which such a witness tells you? always bearing in recollection that you are the judges of how far he is to be credited. Why the plot which he tells you for effecting rebellion is one so very ridiculous, that it could do nothing more than excite laughter and ridicule in the minds of sensible men, if it were not mixed up with so much horror in other respects, as bears down all inclination to laugh, and stifles all propensity to ridicule. But if it were not mixed up with other matters of more serious aspect, the thing is so ridiculous, that if it were told upon the credit of the most unexceptionable witness living, you would not believe it for a moment, you could not receive it with a grave countenance, and yet you are required to believe it because it is told you upon the testimony of a man against whom I do not say too much when I say that he is one of the most base of mankind. As far as relates to the treason of this case, he tells you that their first deliberation, as I have taken it, was a few days before the burial of the late king. There they first broached this idea, and nowhere do they state that they expect to have above forty men. It was then he says they first broached the ridiculous story that they were to take the two pieces of cannon in Gray's-inn-lane. Now as to that, all the use it is possible they could make of them must have been very small indeed; because it does not appear that they had any balls or any ammunition;—they had half a dozen flannel bags, which it is said were meant for cannon cartridges;—they are to take six other pieces of cannon from the Artillery-ground;—they are to assassinate his majesty's ministers;—they are to fire the town;—they are to surround London;—for that is part of their plan;—for, you recollect, not an orderly was to go to Windsor to recal the troops;—they were to prevent even one orderly, by any rout, reaching Windsor, or giving notice to the soldiers there;—and even if he did get there, they were of opinion that the soldiers would be too tired to return to rescue this great city, and they should easily hold

London;—they were to send to the sea-ports;—and then he throws in that which he has somehow or other found to be very necessary, they were to take the Mansion-house as the seat of provisional government! I have not written the evidence three times over, but I think it was on this occasion he said they were to dig a trench round London to impede the march of cavalry. If such a plot as this were told you, could you believe it to be adopted by men out of Bedlam. My learned friends, the Attorney and Solicitor-generals, both feeling the ridicule which must fall on such a statement, say, men of ardent minds (I do not affect to use their exact expressions, and therefore I shall not do it so forcibly), bent on their ultimate objects, overlook all intermediate difficulties. I give my learned friend credit for the truth of that observation. I admit men bent on ultimate objects, will overlook intermediate difficulties, but they must be objects which come within the reach of probability or possibility. Men who walk about the town without a strait waistcoat cannot overlook some things. There are certain difficulties which men with even the glimmerings of an understanding cannot overlook. If the prisoner and his confederates had been stated to have met and conspired to batter down Newgate with pea-shooters, it is not a whit more ridiculous! for they might as well attempt to batter down the massy walls of that prison with pea-shooters, as they could attempt to attain their supposed objects with the force and means detailed in evidence.

Now, gentlemen, the inference is that the thing is not only improbable and impossible, but so improbable and so impossible, that you cannot believe it to be true. And you cannot believe it to be true, more particularly coming out of the mouth of such an infamous witness. You may very well conceive that a witness of this sort, coming up with a halter about his neck, and with the terror of his own guilty conscience appalling him and disordering his understanding, may invent all kinds of absurdities and fictions, because (however erroneously) he may conceive it is the wish of those who employ him to convict certain persons of high treason. I say however erroneously he may conceive it; for do not let it be supposed that I am myself insinuating any thing of that sort; I firmly believe, indeed I know and am satisfied that neither of my honourable and learned friends would appear here to ask a verdict from you which they did not conscientiously think the benefit and advantage of the country called upon them to demand. They have done right to lay the case before you; they have done right to lay all the evidence they had, such as it is, before you; and you will do right, and will discharge your duty if in judging of that evidence you shall decide that it does not prove that which they charge to be the legal effect of it, if you shall think, upon due deliberation, it falls short of its intended object.

I do not think it will be necessary for me to go through all the absurd details which this man has given: when I have taken this general outline of the case, you may say it is very absurd; but is there such evidence as compels us to believe it, however absurd it may be? I ask the same question, is there such evidence as compels you to believe it, however absurd it may be? Surely if it rest solely upon the testimony of such a witness as Adams, you will not believe it. Then you will ask, whom is it confirmed by? is it confirmed by Monument? is it confirmed by Hiden? Now, both these two witnesses stand implicated, to a certain degree, in something; in what they are implicated, we shall see by-and-by; both stand implicated, at least in so much moral guilt, that you cannot look to them as witnesses fit to confirm an infamous witness; then recollect, gentlemen, neither of those witnesses were present at the consultation, a little before the king's funeral, at the consultation on the 22nd of February, at the consultation on the 23rd of February, and it was at those three consultations that all that could make this plot high treason, is said by Adams to have taken place; all that could convert their guilt into the guilt of high treason, took place only at those three consultations. Then if neither of those witnesses were there, so much of the plot as gives it the character of being a plot for the purposes of high treason, rest upon the sole and unconfirmed testimony of that witness Adams. Now, let us see what confirmation Adams receives; and here I will not go into the details of the evidence, but just look at the facts as they are confirmed. Permit me to remark to you upon one part of the case, where you might have expected confirmation, if he spoke true, and find none. He comes here certainly, to prove a case of high treason, that is, to prove a case of intention to overturn the government, and exciting to insurrection against the constitution and the government; and therefore he says, that at one of their meetings, I think on the morning of the 28th, Thistlewood sent out for some paper, for the purpose of writing certain proclamations; now first, as to the absurdity of writing a proclamation; he sends out for three or four sheets of paper; three or four proclamations were to be written, and stuck up in different parts of the town; conceive the absurdity of such a measure. This was to be the mode of informing the whole of this great town of London, that the government was overthrown, and that a provisional government was sitting; to be universally diffused by three or four written hand-bills. But what was the motive of the witness in this piece of absurd evidence? his motive here was, to give a character to the meeting, other than it really was; he is here erecting their scheme, whatever it really might be, into a scheme of high treason, and therefore he gives you this bill. "Your tyrants are destroyed. The friends of liberty are called upon to come forward, as the provisional go-

vernment is now sitting. James Ings, secretary." Now, gentlemen, observe this bill; if it had really been in contemplation, or if it were distinctly proved to your satisfaction, it would give a decided character to the meeting, and would certainly implicate them all in the guilt of high treason. But have you a tittle of confirmation of this important document; have you a tittle of evidence of the existence of it, except as far as Adams chooses to state it? It is supposed there is a confirmation of this fact, because at one of those meetings, indeed at the very meeting a lad was sent out to get six sheets of cartridge paper; but the mere fact of procuring six sheets of cartridge paper I apprehend you will not consider as confirmation of what was afterwards supposed to be written upon that paper; if a trace of one of those bills had been found in existence,—if there had been the slightest fragment left, so that it could appear to have been written on,—if you found the name of "James Ings, secretary," or the words "provisional government," or one word of the kind, I would have said the witness was confirmed; but when there is not the slightest evidence of confirmation as to what was written on this paper, this bill being almost the only piece of evidence to give a character to the meeting, when you find this to be the only piece of decisive evidence, and that resting solely on the testimony of such a man as Adams, what can you say to it?

There are other parts of his evidence, which if he had spoken truly, must have been confirmed. If there had been rebellion as well as assassination in the plan, there must have been a greater number of men engaged; it was not the twenty or forty men that were to go to lord Harrowby's that were to take the cannon at Gray's-inn-lane, next to take the cannon at the Artillery-ground, from thence to go to the Mansion-house, &c. But, if he is to be believed, there were to be simultaneous operations by other bodies than the Cato-street assembly; and this was so near their time of action, that the others must have begun their action also. Now, is there a tittle of evidence to show, that either at Gee's-court, at the Borough, at the Artillery-ground, or any where else, any bodies of men were in motion, that any attempt was made to take the cannon, or that they were acting in any other part of the town, or that any suspicious movement was observed any where? Here is confirmation wanting, where, if the story told had been true, most probably there would have been some confirmation; I infer, therefore, from this also, that so much of his story is a fabrication. And remember, and never let it pass from your minds, that it is not the believing part of Adams's story which will convict the man at the bar of high treason. You must believe this story to its whole extent; you may believe it to be confirmed in every part of the assassination plot, and yet, if you believe no further, you cannot find the prisoner guilty of high treason.

After his evidence is finished, three witnesses are called who confirm him merely as to the fact, that a room was taken in Fox-court. Now, I admit he is confirmed as to the fact, that these conspirators (for so I will call them) took a room in Fox-court; but do not forget, gentlemen, that that fact is not decisive of the question. It is not that these men met in a room in Fox-court; it is, what was the subject of their deliberations when they were there assembled, that you have to investigate; that is what you must take into your consideration before you can arrive at a conclusion of guilt. Now, I will put this question: Suppose they had met for any purpose, lawful or unlawful, and one infamous witness had come and stated that in their deliberations they were consulting on certain specific matters (say matters of high treason); could it be any confirmation of this story to prove these men had met together? What would be the situation of mankind? A club of the most innocent of men may be the subjects of an information to government. You and I may be all members of a club; one infamous man may say that our deliberations are all treasonable, and the confirmation of that fact is, that true it is we were members of a club, and the club did meet there; now, is it confirmation at all of what passed in the room that men went there? Then, the next head of confirmation applies certainly to so much of the statement as goes to the plot to be executed at lord Harrowby's. The watchmen in the square are called, and they truly prove (for there is no imputation upon their evidence) that four of those men were seen watching about the house; is that a confirmation of the purpose for which they were alleged to be watching? What is that purpose? That purpose, it is stated, was the destruction by violence of some of the highest and most valuable men of the country; but base as that act is, it is not high treason. Then, if those two facts, confirmed as I admit by unsuspected witnesses, do not go to confirm that part of the case on which alone your verdict can be founded, see whether it can be confirmed by any other evidence.

The next witness called was Monument; and he was put forward, I suppose, as a witness to confirm the former witness, Adams. The observation I before made to you upon his testimony, you will bear in mind. Monument was at none of those deliberations, and therefore neither then nor now does he affect to relate what passed at those deliberations; but he says that he is a shoemaker in Baldwin's-gardens, that he met Thistlewood, and had a conversation with Thistlewood—there is nothing very important in that conversation. Afterwards Brunt, the prisoner at the bar, called upon him with Thistlewood, and Thistlewood at once told him they had something great to do, and asked him if he would be one; that he had been promised support by a great many men who had deceived him, but now he had got men who would stand by him.

Brunt called again in the afternoon; and he not being then ready, went to Tidd's house about half-past six o'clock. Tidd said, he had been waiting for some more people to go with him that he expected would be there; but if no one else came before seven o'clock, they should go together. When he came to Tidd's, he saw Tidd arming himself; he put a brace of pistols into his belt; and as they were going along, he desired to know where they were going to; were they going to the House of Commons? Tidd told him, no, they were not going there, for there were too many soldiers there. Now, what do you think of this witness, who avows that he went out with an armed man, and thought he was going to the House of Commons? for what purpose you are left to guess. But he says, Tidd at last told him there was a cabinet dinner; and then he adds, he was fully aware what was meant—he being fully aware what they were about, joins them in this nefarious scheme. Now, I should like to ask my learned friend, whether they mean this witness to confirm the witness Adams? Is not this rather a man who wants confirmation himself? Then do they call him to confirm another infamous witness? Can you consider a man a pure uncontaminated witness, who, according to his own avowal, is going out to commit murder? and then when he is cross-examined as to what he thinks of his own conduct, he says, to be sure he acted *very foolishly*! that is the tender way in which he speaks of his own atrocious conduct. But, gentlemen, you heard him further cross-examined. If an accomplice be sincerely contrite and repentant of his crimes, and comes to tell a story of truth, at least his conduct and demeanor should be such as to convince you, that he is so repentant that every tittle that he speaks is consistent with the most rigid truth. When I asked him, whether he himself did not attempt to seduce another man, whose name I do not now recollect, you heard the manner in which he answered that question. He shuffled; he would give me no direct answer, he could not recollect. Do you believe he could not recollect? he dare not deny it; and I will tell you why he dare not deny it, because that man might be called.

A Jurymen (Mr. Goodchild).—I believe you are mistaken, sir; you will pardon me, I believe that came from Hiden.

Mr. Curwood.—Gentlemen of the Jury; I hope—

Mr. Solicitor General.—It is merely accidental.

Mr. Curwood.—These witnesses have been changed; they have not come in the same order as they did in the last case, which led me into the error of supposing that what applied to the first witness applied to the second.

Mr. Goodchild.—I am perfectly aware of that; you will excuse the interruption.

Mr. Curwood.—I am obliged to you, sir, for it. But this he said, that being informed there was a cabinet dinner, he was perfectly aware what they were about. When he was asked, why he did not desert these men, the common and flimsy answer presents itself, "I was afraid." Could a man be afraid of leaving his companions in the middle of the streets of London, and going to the first magistrate forthwith, and instantly disclosing such a horrible scene? Do you believe he retired from fear, or do you not rather believe, that he came forward to speak what he says, because the halter is about his neck?

What he says is not however so very important in my view of the question, because he does not speak to that which constitutes the guilt of high treason; it is true, he gives confirmation to so much of the story as relates to the assassination of his majesty's ministers; but as to all that which makes high treason, namely, the deliberations to overturn the government, and the proclamation, there he, bad and infamous as I may call him, gives no confirmation to that part of the story.

The next witness, Hiden, is put up as one on whom you may rely, because he is the witness who told lord Harrowby. I ask, must not this witness, from his own account, be deeply implicated in the iniquity of some plan; because he represents to you that Wilson came to him in the open street, and without any hesitation, without any veil or disguise, at once addressed him upon the subject, and asked him, whether he would be one to assassinate his majesty's ministers? That they were waiting for a cabinet dinner, and all things were ready. He showed no horror and no aversion to this plan; but, on the contrary, according to his own account, he readily assents. The use I make of this avowal of his, is this, that he at least must be so infamous a man, who could so conduct himself, that he is not fit to be set up to confirm the testimony of another infamous man; he is not that pure and unsuspected witness, who ought to be called to confirm an absurd and ridiculous story coming out of the mouth of another infamous witness. Thus much appears upon the testimony of one of those two men (I do not immediately recollect which) that in a conversation Thistlewood had with him, Thistlewood told him it would be necessary for them to get arms (I understand this was Monument), for all his friends got arms. This will be stated as evincing hostile intentions against the government of the country. Gentlemen, be it so; take that fact as proved, that Thistlewood desired them to get arms; does it prove the fact of a deliberation and consultation to levy war against the king? For such is the language of the indictment, to levy war against his majesty. Are there not other known circumstances to account for this desire to procure arms? You cannot blot out of your minds all the knowledge that you have acquired in your intercourse with mankind; it is a melancholy thing, but it is no less true than

melancholy, that there was a great ferment in the country, and particularly among the lower orders of the people, who unfortunately for themselves and for the country, have taken to the—study it would be absurd to say—but have taken to the consideration of politics. You cannot fail to recollect, that in August last, in Manchester, where there was one of those meetings of which we have had so many, a very singular scene took place, of which, standing here, I would refrain from speaking in any terms that might be likely to excite feelings of irritation in any breast; but this is very certain, that it was a transaction on which the feelings of mankind were very much agitated and much divided, and many persons, well-wishers to government, thought that an unarmed mob (however much they might disapprove of the proceedings of that mob) having been attacked by an armed force, it was a matter of serious regret, and they altogether did not unite with government in considering as proper certain votes of approbation they had given before inquiry had taken place; but, on the other side, there were many of the lower orders of people who were quite outrageous, who gave it a name of great opprobrium, "the Massacre at Manchester;" and it was publicly given forth, that inasmuch as the military had attacked an unarmed force in their deliberations, they would in future go armed themselves. This will serve as a clue to explain this part of the conversation; it is not denied that Thistlewood was deeply embarked with those persons who evinced, I admit, a determined intention to resist certain laws against such meetings; and it was natural, with their feelings, that they should procure arms to prevent their dispersion; but still that does not amount to the crime here charged on the prisoner, namely, high treason; and that explains satisfactorily why those parties should have been so anxious to procure arms, without the necessary consequence being that all those arms were for the purpose of overturning the government.

I have said something upon the absurdity and ridicule that must necessarily follow any supposed plan of overturning the government with such forces as these men could raise. You see before you pretty nearly the whole armoury; formidable I admit it is for the purposes of mischief, but for the purpose of overturning the government—a government supported by the revenues of all the world I may say, and by thousands of armed men—the parish watch would have been sufficient to have put them all down; not but that they might have done a great deal of private mischief much to be deplored; but still it comes back to the question, was it meditated to overturn the government? You cannot overlook the evidence that their means were so very inadequate as to throw a contempt and to fasten ridicule on any plan of the kind, and therefore it is not likely that they really had such intentions; and so fully am I convinced, that if this imputation had not been

mixed up with much at which the heart revolts, there are hardly twelve men to be found in the British empire, who, if put into a jury-box, would not have disbelieved the whole tale.

I have now endeavoured, and I intreat you to do the same, to look through the evidence; some amongst you have heard it before; reconsider whether you, like myself, have not in your first impressions given it too hasty belief, and a credit, which, on minuter examination, it did not deserve. And here let me observe also, as I stated in the outset, it is necessary to consider how far the evidence might have been confirmed. Ask yourselves, who else might have been called? You have in evidence before you, that among these conspirators there is a man of the name of Edwards, who was one of the most active; he is stated to you to have been a man peculiarly busy in making those hand-grenades. The government have given him to the prisoner among the list of witnesses, but he is not called. Now he is a man that could not only have confirmed all that Monument and Hiden have told you, but he would have told you all that passed in those secret deliberations which now rests solely on the testimony of Adams. If he is not called, ask yourselves, why he is not called in a case of high treason, where it is most desirable that every man should be called that could by any possibility support the case? And I do not say too much, when I say, that in the great learning and discretion that existed in the learned gentlemen on the other side, they did not call him because they feared that in calling him something might have come out that would have discredited or totally destroyed all their other evidence.

There is also another man, of the name of Dwyer, who is given us in the list of witnesses; and I may state it because I can prove it in evidence to you if necessary. Dwyer was called upon a former occasion; and Dwyer was represented as a witness on whom the jury might safely rely, because he disclosed to a major James immediately what was told him. Why is he not called to-day? Because to-day there is evidence in court that would show you he is a witness wholly unfit to be put into the witness-box; my learned friends, therefore, in their discretion did not call him; so that now they rest their case, as far as it relates to high treason, solely upon the testimony of that infamous witness, Adams.

Many other observations present themselves to my mind, which I forbear to state, as they will equally strike you. I hope I have observed my promise; I have endeavoured strictly to keep my mind cool and calm; I have not attempted anything that looks like declamation; I have met the evidence fairly as it presents itself to my mind; I entreat you to do the same; and, even if there should be some amongst you, as I said before, like myself, whose first impression was, that the evidence was stronger than, upon a reconsideration, you now find it to be: I do not entreat you, be-

cause I know you will do it without my entreating you—I say so from what I have seen of you upon former occasions—I know you will not hesitate boldly to do your duty: and if to-day, with the variation there is in the present case from further circumstances, or if you think the evidence weaker than you formerly thought it; or if you do not think, upon more mature deliberation, that the evidence establishes the case, I know you will have the manliness, notwithstanding former opinions, to find a verdict of, Not Guilty.

John Bennett sworn.

Mr. Gurney.—Will my learned friend state to what point he proposes to examine this witness? I am not aware of the point on which his evidence can apply.

Mr. Curwood.—To prove that when Hiden invited him to the meeting, he told him something was going to be done there; he denied that he said that.

Mr. Gurney.—No, I beg your pardon; I have my note here. “I asked Bennett to go, and said, perhaps Mr. Bennett would go with me and Mr. Clarke, being a neighbour of mine. I cannot say that I told him something was to be done there; he and I were neighbours together. I asked him if he would go with me; I do not think I could say so, but I will not swear I did not;” how his statement is to be in contradiction of that I do not apprehend.

Lord Chief Baron.—It is consistent, certainly, with his saying, that he could not swear that he did not say so.

Mr. Baron Garrow.—It was pressed upon him, but he would not say that he did not say so; he declined doing that.

Mr. Curwood.—Then, my lord, we do not offer any other witness.

Mr. Adolphus.—Gentlemen of the jury; the case for the prisoner having closed without the calling of any witness on his behalf, it nevertheless falls to my lot to address to you a very few observations, and that arises from the peculiar benevolence of the law on the subject of high treason; and when I refer to that benevolence of the law, I am quite sure that addressing myself to such a jury as I have now the honour of speaking to, the goodness of the legislature in forming the statute which grants me such a privilege, will not fail to extend itself to your bosoms; and in proportion as you see our wise ancestors were anxious that the prisoner should have every means of defence, you will afford him every benefit of that defence, and will assist him as much as you can, consistently with your oaths, in giving effect to the deficiency of proof on the part of the prosecution, or to whatever you shall perceive favourable in his case. The privilege, of which I am now availing myself, undoubtedly was intended as a barrier against

the influx of convictions from any cause whatever in a case of treason, much more than in any case of felony.

If, as my learned friend observes, you, living amidst mankind, and your powers of observation, and your experience not being circumscribed, may be supposed to have entertained, even as members of the British public, some pre-conceived notions of the merits of the present case, if, I say, in that general character, by whatever means, you must have some opinions, and have acquired some knowledge on the matter about which you are shortly to pronounce your verdict—I know the majority of you have, in a more particular manner, the means of forming such opinions, you having before sat on the trial of some individuals implicated in these very treasons; and being aware that the evidence now brought before you varies but little from that which has been produced on the former occasion; and knowing perfectly well what was then adduced, and which has not been so now—to such a jury, even if it were my inclination to make a speech of any great length, it would be fruitless and unavailing;—those who have been present on the former trial, know how much I laboured, and perhaps if I can avail myself so far of their goodness, I may pray of them, if there were any argument upon those occasions which can be made use of with advantage to the prisoner on this, that they will import it into the present cause, and give him the benefit of it.

Gentlemen, when I say that I shall follow the example of my learned friend in addressing you very shortly, it is not because I shun taking upon myself any trouble which the exigency of the case may require; but I have not lived to my present age without learning, that he who desires that his efforts shall be useful to any considerable number of his fellow-creatures, must learn to proportion his exertions to something like the probability of effect,—that he who shows himself equally ready at equal length, and with equal earnestness, to urge every topic, may be censured as deficient in judgment,—and that we do not advance our hope of convincing others, by showing that we are incapable of being convinced ourselves. Now, although I entertain the same opinions that I held before, still, as I know that my two learned friends, the Attorney and Solicitor generals, have made observations upon them—as I know what observations have been made elsewhere upon some parts of them—I shall not advance all those arguments again, not because I do not entertain in my own mind the principles on which they are founded, but because after a certain time I may despair of using those arguments with the effect I have always wished, and at one time sanguinely expected. But let me not be understood by that to abandon the cause of my client; you know the case as well by your attention on this as on the former occasions; and you know that every tittle of evidence

which has now been brought forward as applicable to this prisoner, has been used against his two unfortunate predecessors, and will equally apply to all the other eight, who remain to be tried under the present indictment. To make, therefore, certain observations, supposing they are applicable to each; would be of little or no avail, if you remember all which has been said upon the former occasions, and make the distinctions which my learned friend has made to-day, and which it will be my endeavour to enforce by a very few observations.

The nature of the offence being pointed out to you, leads to the single consideration by which you can be influenced in making up your judgment; is there in this case consistent, positive, supported evidence of an intention to commit high treason, that is to say, to depose the king, either virtually or personally, or to levy war against him for the purpose of compelling him to change his measures? Is there evidence upon that subject so clear and broad, that you can rely and stand firmly upon it, discharging from your minds (and so I pray you to do) all the horror you must feel about that which I take, for the purpose of this case, to be indisputably proved, an intention to do a guilty act, but of a different nature from high treason? I am almost afraid I ask an impossibility, when I ask a jury of Englishmen to discharge from their memories, for the purpose of this cause, that there was a conspiracy to murder fourteen men of the first eminence and character in the state, in cold blood; and that in the progress of the events arising out of that design, one man, in the execution of his duty, lost his life; but in order to determine whether this is high treason or not, it is necessary you should discharge that from your minds, so far as it may operate in convincing you that there was an intention of high treason; for if they fail in proving that by other means, whatever your detestation or horror of the crime may be, yet of high treason the man at the bar will remain not guilty, whatever you may think of other offences with which he is charged.

Although I shall not dwell upon all the points in this case, yet I implore you to take the whole of the matter fully into your consideration; to reflect upon the sort of witnesses this case is proved by; and to consider whether those witnesses, unsupported by others as to any treasonable act or intention, are such as entitle themselves to your belief to the extent which the indictment charges, and to which your verdict is required to go.

When I have said on former occasions, that this plot, of which Adams is the witness, destroys itself by its improbability, I mean only to say, that improbability alone, if the fact should be distinctly attested, is not a ground for disbelief; but that when a man tainted to the degree Adams is (and he alone speaks of the plot); when he alone, tainted to such a degree, is brought forward, it behoves a jury to consider whether they can, upon his evi-

denca, decide the fate of twelve, or sixteen, or five-and-twenty men, who are supposed to have conspired; or whether they have only the fictions of a man, who as the means by which he shall best secure his own safety, and most surely recommend himself to the protection of others, has invented a story so grossly improbable that no one can believe it.

I am not insensible to the effect of an observation which has been made in the course of these trials, that when you are to try a proposition of this kind, the rule of probability is a very fallacious test, because, says the person I allude to (I will not say who it was), if it were put to me, do I or do I not believe that twenty-five Englishmen met for the purpose of assassinating fourteen or fifteen Englishmen, in cold blood, I should say the improbability is such, that I am obliged to reject it from my mind; and if I can believe that on the evidence given (and it does not appear to be met by any attempt at contradiction), I can also believe any other improbability; at least I cannot reject it from my mind only because it is improbable. I know that I am not giving the very words in which these observations were delivered; I am incapable of doing justice to the speaker; but, on the other hand, I am not purposely diminishing their force, merely because they make against my interest. It is impossible for any man who heard this argument, not to feel it deserving of the highest consideration, were it only for the respect due to the individual who produced it, who adorned it not by studied elocution, but by a beautiful simplicity which has never been exceeded, and which has all the effect of labour without its effort. This argument it became necessary for me to take seriously into consideration, as it proceeded from the highest authority in this court; I admit the weight of it, but yet I think it is possible for men goaded by personal feeling, misled by writers of the very worst description, by arguments the most atrocious, to have conceived the rash and detestable project of removing certain persons as obnoxious to public opinion; that they may have wrought themselves up to the pitch of believing, that by so doing they should execute a great act of public justice, and render a meritorious service to the present age and to posterity, and yet never have meditated that which is so improbable, so destructive of itself, and so incapable of execution as the plot charged upon them. Gentlemen, what is the cause? My learned friend has pointed it out to you exactly; the transaction which had been publicly and rashly denominated, "the Massacre at Manchester," was particularly thrown out for the discussion of the lower orders, and when they had been thus inflamed, every particle of discontent or disaffection that could be found any where was brought together and practised upon by designing intriguers, who inflamed and seduced those whom they intended afterwards to betray. One was peculiarly fitted to be a leader, and

that was Thistlewood—a man who was known for years to have been expressing his unceasing dissatisfaction against government—a man who, for the share he took in certain great and notorious public meetings, was the subject of prosecution for high treason—a man who had been recently liberated for having threatened the life of one public minister, and sent a challenge to another.

Mr. Gurney.—The same.

Mr. Adams.—I believe it was so, and that lord Sidmouth was the subject both of the threat and of the challenge. It is not necessary to go into the particulars further; but these were the elements on which those practices could be effectually used; and accordingly you will see, when you come to examine a little the testimony of the witness Adams, how Thistlewood and the wretched ignorant elements of that conspiracy have been practised on by a perpetual instigator, and have been watched by a perpetual spy. The evidence in the present case rests entirely, as I hope to show, on men who are to a certain degree implicated in the conspiracy, and who have only this most extraordinary merit of having no one of the mock or inferior virtues which distinguish persons on similar occasions. If men enter into a conspiracy, fidelity to each other (how much soever a crime in itself); seems a virtue if there is a quality requisite in a conspirator, it is that courage which shall lead him through the undertaking in which he is embarked. Now the recommendation of the witnesses who come before you to-day, is, that they have been conspirators, and therefore as bad as those whom they accuse; but they want even the latent sparks of courage or of honour, by having been cowards in action and traitors to each other, for the purpose of securing their safety.

With respect to the witness Adams, he alone has given you the secrets of his conscience; but his character has been drawn by my learned friend, and I shall attempt to add a little to it. You who have had that man called before you, have heard that which it is important for you to take into your consideration to-day, that he, at the age of forty-five, renounced his Redeemer, and rejected the Book of Life; it is by his swearing upon that book alone, that you are to give him credit; let me not hear it said, that on him, as on many other persons, suffering has wrought contrition, and that he has become penitent in proportion as he has perceived himself in danger. Where is the evidence of that in his conduct? Where is there any thing that shall induce you to believe in him who professes that he did not believe in his God, and gives no reason to believe that he has returned to his faith? In the first place, contemplate his treachery to those whom, at the moment of his infidelity, he seems to have seduced into many of their actions, and whom he now comes forward

to betray. Were he an infidel, he was at least a subject of the realm, and had been a soldier; for him to join in such a conspiracy, shows he had neither the valour of a soldier, the loyalty of an Englishman, nor the virtue of a man; and that when he renounced his Redeemer, he anticipated only that sacrifice of himself for which his conduct through life had been preparing him. What reason have you, then, for believing the incredible story he tells, when out of his mouth he ranks himself among the most infamous of mankind, unless it is to be said, that your conclusion is to be aided by the very incredibility of the witness, who comes to tell you a story having no recommendation but its incredibility? Gentlemen, of Mr. Adams it is impossible to speak without horror; and if I ever saw an instance in which infamy was carried to its utmost, it was, when refusing a question put to him by my learned friend, he used the most extraordinary expression, "I abstain from saying what induced me to do such a thing, because I do not wish to do the prisoner, Brunt, more mischief than my evidence must do; I consider his family." Good God! Gentlemen, a man with whom he had been walking about arm-in-arm, eating and drinking with him, and sharing the morsel his poverty could ill afford for months together, comes here to-day to lay upon him every aggravation that can be laid upon the name and character of man, to swear to a most incredible discourse of his about not believing in God, and yet praying to God (a circumstance totally unnecessary in the present case, and a fiction introduced only to give countenance to the rest of the story); and then affecting to compassionate the case of that woman whom he will make a widow if he succeeds, and those babes whom he will at the same time make orphans; while he is engaged in the task of wholesale destruction, and will bring to the gallows eleven individuals, with eight of whom he professes to have had some acquaintance, with more as he would make you believe; although, with respect to one whom he has represented as having been present at two of their meetings, when he is presented before his face, he is obliged to confess that he does not know him. Adams's story has been already dissected, and its improbability—its impossibility indeed—pointed out, and it is upon faith in his story that the whole case rests.

If Adams wants confirmation in any fact, you naturally and necessarily ask yourselves, can that confirmation be given to him? It has been already observed to you that according to Adams's account, there is in the list a witness of the name of Edwards, who has been not only present, but a material adviser and active agent in every thing done, and Edwards stands the most prominent man in the whole transaction. You see "him first, him last, him midst, him without end." Whatever is said, Edwards has a share in it; whatever is done, Edwards

has a hand in it; and yet the incredible Mr. Adams alone is called. Edwards, as Adams has expressed himself, had the title of aide-de-camp, and yet he is not called to support Adams. Will my learned friends say any thing upon the subject?—I have no reason to believe they will from any thing which has passed. Will they merely say, that Edwards would only add to the number of accomplices, and therefore only add to the number that want confirmation? Then let us see whom have they brought to us? Is Monument less an accomplice, do you believe, at this moment, however he may have stood on former occasions? or is Hiden less an accomplice? Let us see how that is, and then we shall prove to demonstration who are accomplices. Is Monument an accomplice? That is beyond a doubt, for he admits he did enter into the scheme; and he has shown no one virtue to induce you to believe him upon his oath, except his excellent care for his own preservation, which, when the conflict had begun at Cato-street, led him to hide himself in the manger, that he might be prepared to give information. Mr. Adams pursued the same conduct; for whether we are to believe him sincere, or to believe as I believe him, a spy from the very beginning, who obtained confidence only to betray it, and entered into those plans merely for the purpose of disclosing them, still his care for his own preservation was such, as to lead one very much to believe that his escape was favoured by those who made the assault upon the place. Then does Mr. Monument, if he could do it, support Adams, or is he himself supported in that which he advances? Monument is brought to support the evidence of Adams, by showing that it was part of the plan of the conspirators to be armed, and that they had declared that all their adherents were so, or ought to be so, for that Thistlewood had made that declaration. When did he make it? Why, when they were going to the public meeting at Finsbury-market, where it was to be part of the design of the day, to show, that the meeting at Manchester equally legal, with supporters equally respectable with their own, was attacked and dispersed; this was long before Adams gives the date of the supposed conspiracy, which you are called upon to try; it was in October, long before the taking of the room or the meeting of parties; it was at a time when their operations seem to have been confined to the holding of a meeting.

It has been argued, and perhaps may be hereafter, that however improbable the plan which Adams has disclosed, still it was formed; for that they, being such rash enthusiasts, conceived that the British public entered into their schemes, and that they would adopt them, and bear down all opposition by accumulated force; and this, too, is to be supposed the opinion of men who had called and held the meetings in Smithfield and Finsbury, where they were hooted and derided, and made a sport of by that very populace who would, it

is supposed, afterwards aid and assist them in the carrying into effect the ill-judged and preposterous plans which have been imputed to them. Gentlemen, rashness and enthusiasm will not go so far; no one can be an enthusiast after a conviction that his plans must necessarily fail for want of support; and no man would expect, with twenty pike-staves, to arm men sufficient to overawe the metropolis, when, after having assembled in a pool and a quagmire, after retiring from their meeting pelted with mud, their ensigns defaced, and their persons insulted, it was impossible they could expect numbers to support them, who had never seen numbers assemble but for the purpose of deriding them—that they could expect men to risk their lives in their plans, who had risked nothing but rotten apples and eggs to evince their hatred and contempt for their persons. That such men may have entertained a project of murder; that they may have furthered it by a plan of plunder, I can readily conceive, and readily believe; the depravity of human nature does not permit me to withhold that admission from you; and that disclosed in the case not by Adams, but by all the circumstances connected with the case, and by the information collected in various quarters. I do believe that much mischief was intended to be done, and much terror intended to be excited, and many houses to have been burnt to further those plans of vengeance and of plunder which they had formed; but that a thought so foolish as that of overturning the government entered their minds, I cannot believe; you have no evidence of it but from Adams, and his evidence is refuted by his own infamy, by the experience the supposed conspirators had already had, by the impracticability of the plot, and the utter want of combination or support adequate to the purpose.

I will merely, in passing, touch upon the plan stated by Adams; here are twenty or thirty men, who choose to suppose they have adherents in the Borough; who choose to suppose they have adherents in the city; who choose to suppose forty or fifty Irishmen inhabitants of Gee's-court will rise and support them; and they are hence to proceed on this project to murder the ministers. I am afraid that personal vengeance, and the desire of assassination, which had been too long fostered in their minds, have wrought them up to that; to burn houses may also have been a part of their plan: but observe what is fixed upon that by Adams;—one witness, called expressly upon that subject enumerated the houses which it was proposed to burn, and to which their numbers and their preparations might be somewhat commensurate; lord Harrowby's, my lord Castle-reagh's, the duke of Wellington's, the bishop of London's, and one or two other names, to which the witness added there was one more, but that is all. There is no high treason in that, however atrocious the act may be; but how do they attempt to make it high treason? why they get the story of the Portman-street

barracks, invented by Adams, who had as good reason to know what he was talking about as Harrison, together with the burning of Furnival's-inn, which no one besides himself seems to have known; for he who enumerates the places one by one, does not include that, and yet it could not have escaped the observation of any man; but that which is merely fiction cannot be the subject of proof; and that which Adams invented, of course no other man could either attend to or observe: such is the ground on which a charge of treason is erected.

We next come to the ridiculous story of the cannon to be seized without force, to be conveyed without horses to besiege the Mansion-house, and then to take the Bank, in which a guard is always placed, more than sufficient to destroy ten times over such a paltry force, even if they had twenty times the number. Twenty soldiers, standing in the form in which they would stand, with stone walls before them, and muskets in their hands, would have sent them scattered to every part of the town; just as was done in the year 1780, when a similar attempt was made: the narrative was given me once by a noble lord, who had been the officer commanding a division of troops on the occasion, in beautiful simplicity. On the first firing of the guns, a wonderful stillness succeeded to antecedent clamour; you could see your way all down the streets, which had the moment before been crowded; and there was not a murmur to be heard, except of the multitude seeking their retreat; so that the first fire from the Bank would have dispersed them just as effectually as the appearance of that brave young gentleman, lieutenant Fitzclarence, did at Cato-street, when all the arms and ammunition served only for a rash attempt on the lives of one or two individuals. There was nothing which developed that combination or consistency which would constitute high treason, but a rash and ill-digested predatory attempt, totally distinct from the efforts of those who seek to subvert a government. This is the plan which Adams would have you believe, on his single testimony, the Crown not calling those who were present at these consultations; not producing, above all, the active, intrepid, and persevering Mr. Edwards, who could best of all, if there were any truth in it, give you an account of every thing projected, and every thing transacted.

With respect to Monument, I believe I have made the necessary observations; but I will remark on one part of his evidence, which may be relied on. It is said that when Monument had his interview with Thistlewood, Thistlewood made use of these expressions—"Great events are at hand; the people are every where anxious for a change; I have been promised support by a great many, who have deceived me, but now I have got men who will stand by me;" he then asked whether Monument had any arms, and added, that they all had arms; "Some," says he, "have a pistol, some have a pike, and some

have got a sabre; he said I might buy a pistol for about four or five shillings; I told him I had no money to buy pistols; he then said he would see what he could do; I do not recollect more of that matter." Now, gentlemen, all this was for the Finsbury meeting: and he says, that on Brunt first accosting him, he, Monument, said, you have been absent so long I thought I had lost you. This related to certain meetings which were expected to be general all over the kingdom; but they are assumed as the plots of an after-formed conspiracy, and as supporting the testimony of Adams, who at that time did not know the parties, nor had even seen the face of Thistlewood. Then how does it stand? why thus: in October or September, for I do not know exactly when the meeting was, before the meeting in Finsbury-market, these great events and great changes had been announced; the meeting in Finsbury-market had taken place, and the people who attended it had been completely discouraged; their connexion had been dissolved; so much so, that when they came together again, Monument said to Brunt, I thought I had entirely lost you; and now he seems to connect the two plans, that for the meetings, and this for the assassination of ministers, which I am sorry to say was prepared, and thus it is that Adams is sought to be supported.

We have before us next, a most material witness, Hiden, who, it is said, is not an accomplice, and therefore ought to be believed. I was not present yesterday, for a reason which it is unnecessary to state, when my learned friend cross-examined him; but I understood he did not deny, at least, having been so far implicated in transactions of this kind—and I beg to be corrected if I mis-state, because, when I avow that I am speaking of a time at which I was not present, I cannot be supposed intentionally to misrepresent; I had rather be set right now than replied to hereafter; but I understand that witness, being pressed upon the subject, did not go to the extent of denying—that he had invited one other person, or other persons, to join a meeting of this kind.

Mr. Solicitor General.—To go to a meeting of a shoemakers' club, where it was said something was to be done for the good of the country; he will not undertake to say that something of that kind was not said.

Mr. Adolphus.—I am very glad to have the very words from the Solicitor-general; this man was inviting another upon the very eve of the execution of this conspiracy; he does not deny upon his oath, that he was the inviter of some other persons to join a meeting which has been described to you as a pretended club of shoemakers, that is a club where shoemakers and tailors and others went. When shoemakers and tailors have great matters in agitation for the reform of the state, the state is much obliged to them, it is doing the state

much honour to devote their hours to tobacco, porter, and reform. But this man does not show that he is incapable of inviting another person; he is not therefore that innocent disinterested person which I supposed him to be from his evidence as first delivered, who took the earliest and readiest means of disclosing all he knew to the individual intended to be sacrificed by it, namely, to lord Castlereagh, but failing him lord Harrowby.

Gentlemen, does he not appear under considerable suspicion of being one of those who would wait till he had got something which he could carry to an effectual market? Does he support any plot or plan except by the conversation with Wilson, arranged so as to bear upon that part of the subject? Does he tell you of any thing relating to a plot beyond the scheme of the assassination of ministers? Let us examine his conversation with Wilson. I have given you already an express enumeration, not to be departed from, of the houses that he pitched upon; they were lord Harrowby's, lord Castlereagh's, the duke of Wellington's, the bishop of London's, and one other, which he did not recollect; now, when he sees Wilson first, he reports him to have asked, "would I be of a party to destroy his majesty's ministers at a cabinet dinner, they were waiting for one, and all was ready, and they had such things as I never saw, they called them hand-grenades; they are, I believe, such things as nobody ever saw; they were to light up some fires; they depended upon me for making one; and I told him I would; he said, those things were to be put into the room where the gentlemen were at dinner, and they who escaped the explosion were to die by the edge of the sword, or some other weapon; they were to set fire to some houses, and keep the town in a state of confusion for several days, then it would become a general thing;" now these are the particular words and expressions upon which this treasonable conspiracy is attempted to be fixed. Is there any pretence that he disclosed to lord Harrowby, any thing like this? Is there any pretence for saying that the matter went further, from his declaration at least, than that there was a plot to destroy his majesty's ministers? And here let me set myself right with respect to a supposition once put, as founded on some unconsidered expression of mine, certainly not arising from a desire or wish to misrepresent, which I consider it my duty to deny at the moment, and which I now deny again; I never did say, nor think, nor have I any intention now to say, that lord Harrowby in particular, or his majesty's ministers in general, ever had the least thought, by the encouragement of reward, or the hope or promise of advancement of any kind, to induce this man by any endeavour whatever, to strain his conscience to swear to one particular more than he actually knew, or more especially to invent any plot or conspiracy for the purpose of furthering their views, or that this might have any effect on the king's subjects. Per-

haps I may be going further than my former statement might seem to warrant, but I will make this qualification; I still believe that the operating motive on Hiden's mind when he made a disclosure to lord Harrowby, was reward from lord Harrowby or some one else, and that therefore that motive would have an influence on the mind of the witness, although not inspired or encouraged either directly or indirectly by the noble individual with whom he communicated; that I did believe, and that I do believe; you have heard he is a man in beggarly circumstances; that he is a prisoner for a very small debt in the prison of the Marshalsea.—I am told that is not proved in this trial, but that he is a man in some difficulties, and I believe I am at liberty to state, that appearing here by virtue of a habeas corpus, he is indisputably a prisoner confined for debt; such a man, under such circumstances, would therefore indulge hopes which his majesty's ministers may not feel themselves disposed to excite, or at least would not excite by promises, or foster by any declaration of theirs; but the influence upon his mind is the same, and we must consider what his actual expectations were, not what his reasonable expectations might have been; but I go further, if his majesty's ministers were not apprised of it, and he was the first person who gave them that information, I do say, as a member of the community, this man has a right to expect the remuneration which he ought to receive, who has saved their lives; at what time, or under what circumstances it is to be made, it is not for me to divine, but I have no hesitation in saying, it ought to be made; I do not press this into the cause, as having an influence upon ministers, but as having a possible influence upon the mind of the witness himself, and therefore as being not unworthy of your best attention.

Now, gentlemen, what is the confirmation of this witness? How do the others each require confirmation for themselves, namely, Adams and Monument, and a third, as I humbly suggest, not sufficiently clear from imputations of this kind, to stand as an unimpeachable and irreproachable witness? Let us see what further support they receive, principally from Monument's brother, who knows nothing of the conversation with Monument, but only corroborates the facts of his being called out of the room, and of their entering into conversation, such as he has described, but not going into the particulars. He says, "Brunt called with Tidd; when Brunt came in, my brother said, I thought I had lost you; there was something passed concerning the king's death; Brunt said, that the king's death had altered their plans; my brother asked what their plans were; Brunt said, they embraced many objects; Brunt said to Tidd, shall we give them the pass-word, which consisted of the letters b, u, t, and they told us we were to meet at the turnpike;" and then he tells you the curious sign and countersign, by which they have

learned to spell the word *batten*. That is the confirmation which Monument has received from his brother, who does not pretend to know what the plan was, but that the king's death had altered some plan; to what degree or extent he does not say, except that it had altered their plans to this extent, that the cabinet dinner being given up, they could not expect to meet the ministers together at a cabinet dinner; this being before Mr. Edwards had found the advertisement in the newspaper, and when they were to go to three or four of their houses, and take off the most obnoxious separately.

With respect to the conspiracy Monument receives no support from his brother, even if his brother were disposed to support him to that extent. The witness relied on as entirely innocent, and entitled to complete credit, is Hale, the apprentice, and we shall see how far his confirmation goes. It is beyond all doubt and dispute—I mention the landlady only for the purpose of saying her confirmation leaves it proved—that there was a room taken, in which certain consultations were held; but the apprentice does not tell you the subject of those consultations, and he supports his own credit by not saying that levity or drunkenness on the part of his master had ever induced him to drop a single word as to the object; but he says, he was told to direct any persons who called on the fatal night, to go to the White Hart, and that he sent one man, of the name of Potter, to the White Hart, and that is supposed to be a confirmation of their plans. That is no confirmation of their plans, because it appears that there were twenty or thereabouts, at Cato-street, of whom twelve or thirteen only have been named, and therefore there is still room for Potter and his friend to have been there, and they may have received an intimation at the bar of the White Hart where they were to go, a secret which it was not thought fit to entrust this apprentice with. It is said, that when Brunt came home in his tattered, dirty, and miserable condition, he expressed himself in these terms, "all is not over yet," to one person with whom he was conversing, and that he went out with that man. Gentlemen, all was not over; he might seek to promote the escape of some others, whom he knew well where to meet, with the intent to bring them together again; but as to re-uniting the scattered parts of this conspiracy, every body must know that that was utterly and clearly impossible; for take the evidence such as it is, if one party had obtained success, they were to send an orderly to St. Sepulchre's church door, who was to meet another orderly from the other party; this we hear from Mr. Adams; and so a communication was to be made. Was there any thing importing that those persons were engaged at that time in any operation? Nothing like it. Brunt's declaration, therefore, amounts to no more than this; there is a wreck, some fragments of which we must seek to save; there

are arms, which Mr. Edwards, or some worthy person, has brought, which we must remove; and part of these were carried back on the morning after this attack, to the place whither most especially they ought not to have been taken, to Fox-court; Edwards takes the grenades, and they were (in a manner that would not be believed, while there was the Thames flowing near London, or any place to conceal them) brought back to the very place where they had been previously deposited, they were there again deposited, and information given for them to be found, to weigh down the case against this unfortunate prisoner.

These are the principal circumstances of confirmation which the evidence of this man receives. As to the circumstance of the watchman seeing Davidson watch; as to the circumstance of the spelling of the word *button*, and the game of dominos, and so on, which have been given in evidence, they are so light and unimportant, that confirmation of that nature will not attach crime either to the most innocent man, or to men whose guilt up to a certain point was admitted.

Gentlemen, I may have failed; and I know I have failed: it is impossible I should view what has been transacting on former trials, without knowing that I have failed in directing your attention to many parts of this evidence. I know you will be told, that for the purposes of murder, fire-balls were not necessary, and poles of this kind: gentlemen, how much villainy may have added to that project which I conceive to have been originally entertained, it is not for me to define; but it is quite as probable that twenty pikes should be used in killing fourteen ministers, or in guarding the spot where that crime was to be perpetrated, as in overawing the whole of this vast metropolis, and overpowering the military to be brought against them. If the probability is to be weighed in the one scale or the other, I say it is quite as probable that they should mean to arm the men attending them on this one object, as that they should by means of such weapons dig a trench to take the metropolis.

I have no doubt that I have omitted many subjects; but I trust to your excellent memory, and to the summing-up of the court, to inform your minds and direct your attention; still I do again implore you to consider how this case is made out, and how it is supported; to give the best attention you can to all the evidence, but without too much disposition to believe these informers; who, if believed, will form a precedent by which prosecutions may be extended to the most alarming degree: you have it already in evidence that there are other branches in this conspiracy to which, perhaps, the same efforts may be directed, and other persons brought to trial, on the very same testimony of these very same men. You have it as a declaration, that a gentleman's servant had supplied money and means to this conspiracy; if you believe informers of this kind, some gentleman high in public estimation, or some

nobleman high in rank and illustrious in connection, may be the next victim at whom this sort of surreptitious credibility will be aimed. If they can, by such swearing, take the lives of the humblest class of victims, it wants but the vigour which will be derived from repeated success, to bring home the same conviction to any individual in the community, who happens to stand high in rank, reputation, or fortune, whom it may be thought desirable to destroy, or convenient to remove.

Juries cannot exercise too much prudence: we are often told that the policy of verdicts ought to be remote from the minds of juries; and so it ought, when the consequence ends with the subject before them; but in a case like this, where the parties present may not be alone implicated, but where hundreds of whom we think not, may come to trial on the same testimony, eked out as this is, not knowing where such things may stop, it is not too much to ask of juries to exercise a very vigilant caution and consideration. Besides, as this trial is not an affair of individual felony, but an affair of state—an affair on which, when judgment is exercised, opinion is not to be suspended—which enters into history, and forms one of the land-marks of the times—which is to be a precedent for the present and future days—it is not too much for me to say to you (and I know, too, you would do it if I did not say it) watch cautiously, examine attentively, be not too prone to listen to spies, but give every circumstance your utmost consideration; and particularly do not, because you think these men to be bad men—because you think them atrociously wicked, proceed on slight evidence to find them guilty of high treason; but weigh well, deliberate, and if your consciences point out a verdict of guilty, I know you will acquit your consciences; but unless you can do so, for God's sake, for the sake of yourselves and posterity, reject and totally discredit a spy, exercise caution, in thinking how he might have been supported, how he has been and how he has not been supported; and then determine whether you are so free from doubt as to be under the necessity of pronouncing that verdict to which I have adverted, or whether you will not feel yourselves called upon to say that the prisoner is not guilty.

A Jurymen (Mr. Goodchild.)—My lord, there is one circumstance impressed on our attention by the learned counsel, which (if my memory does not fail me) I think is not borne out; for we have it not proved on this trial, that the ammunition was returned to the dépôt, as it is termed, on the 24th; I submit myself to your lordship to correct me, if I am in error; my memory may fail me.

Lord Chief Baron.—It was not proved on this trial, certainly.

Mr. Adolphus.—I am sorry I should have fallen into the mistake; I thought it had been otherwise.

Lord Chief Baron.—And there are some other things which have not been proved on this trial; I shall endeavour to set these matters right in reading my notes.

Mr. Adolphus.—I am sure the gentlemen of the jury will believe I did not mean to mislead them.

Mr. Goodchild.—I am satisfied of that.

Lord Chief Baron.—It is impossible that any body who knows Mr. Adolphus, should imagine that to have been his intention.

Mr. Goodchild.—It is impossible, my lord, to suppose that Mr. Adolphus had any such idea.

Lord Chief Baron.—John Thomas Brunt, your learned counsel have concluded their very able addresses to the gentlemen of the jury; if you wish to add any thing to what they have said, this is the opportunity for doing so, and the jury will be very happy to hear you.

Brunt.—My lord, I have had a defence put into my hands but a few minutes ago; I have not had time to peruse it over yet; but I shall make two or three observations respecting the evidences who have appeared against me, particularly respecting the evidence of Monument. It is quite useless for me to attempt to deny being in the room in Cato-street, I do not intend to deny any thing of the kind; but immediately on the arrival of Monument at the room in Cato-street, he approached me; he asked me what was going to be done, when he saw the arms on the bench which has been described; to which, my lord, I replied, that I was not aware that any thing was going to be done, for that Edwards had not brought so many men by thirty as he had stated he could bring there; and it was much against my intention endeavouring to do any thing with so few men, for I would not be led by any individual. Accordingly, perceiving, my lord, that Monument betrayed a great deal of fear, I persuaded him to go away.

My lord, there has been a considerable stress laid upon a number of men volunteering to go to my lord Harrowby's house; this, my lord, I totally deny. I will admit, my lord, that when Thistlewood, as it has been stated, addressed himself to the few men in number (for he saw the men would not act when he addressed them) urging the necessity of going to act, as one of the witnesses stated, or it would be a Despard's job, some few men went into the small room, but they never had come to any agreement or determination (this I solemnly protest) to go to the house; they were endeavouring to see whether they were able to find fourteen or fifteen men desperate enough to go to the square, which they never could have done. I never was so deprived of my reason as to go to meet instant death.

I wish to call the attention of the jury to two circumstances that contradict themselves. My lord, in the first place, Adams

states to implicate me more deeply than any other man except Thistlewood, that I declared, were there six men in the room, I would go to the house and blow the house about their ears; this, my lord, is false. Very soon after comes forward Monument, my lord, and he makes a declaration to you, my lord, and the gentlemen here, that I declared, I would go by myself and bury myself in the ruins. Is this, my lord, consistent evidence; is this sufficient evidence for my life to rest on, or to deprive me of life, my son of a father, and my wife of a husband? My lord, I should wish to advert to another circumstance: while a prisoner in Cold-bath-fields (I was there, I believe, my lord, for nearly three days, and scarcely out of the room even to wash myself) when I came down out of my room to the fire, I saw Monument, I saw Strange, I saw Cooper and Bradburn. Monument, my lord, came to me closely, sat himself down by me, and whispered in my ears these words: "What did you say when you came before the privy council?" says I, "I said I knew nothing of the matter." This, my lord, induced me to ask Monument what he had said; says I, "What did you say?"—"I could say nothing," says he, "you told me nothing; why did not you tell me more? you told me nothing." Says I, "Were it possible for me to tell you what I did not know myself? you knew very well, when you saw the men called on, it was declared every one should volunteer into the small room that would go on such a desperate affair." Though, gentlemen of the jury, you observed, no doubt, that Adams has declared, I was the man that nominated the men to go to the house, and him among the rest; a man whom I knew to be a villain, and who has constantly come to my place twice a day, in company with Edwards, to deprive me of my life. But I am no traitor; I was determined, though I had engaged in this base plot, that my life I would forfeit sooner than betray an individual; I would be racked on the wheel sooner than betray a fellow-creature. This is my principle, my lord, and this shows an intention, my lord, of Monument to betray me.

Now, my lord, I should wish to advert to a circumstance which occurred to me at Cambray, in France. Certainly, my lord, as I am placed here, and my life is placed in the hands of those twelve honest men, it becomes me to state any thing that will be of the least service to me or beneficial to my fellow-prisoners. While I was in France, my lord, I met with Adams, on the first Sunday when I came from Paris, me and my son. I had worked in the capacity of a boot-closer. Adams was a man possessed of no judgment in the trade, though he worked for a number of officers; this man, my lord, I assisted in cutting out boots for the officers, and learning him what I had attained by art in my business. The man became jealous of me, and threatened to take my life; and declared to his wife, if she did not make an open declaration to me, that if ever she spoke to me her life was not safe, he would be

the death of her; accordingly, I was obliged to leave the house, which I did immediately, and never worked for him again. I went there, my lord, to work in the cavalry barracks with the Coldstream guards; and I believe, that if trouble is taken to inquire, they will find nothing treasonable or any thing disloyal about me during that time. I could bring, if I had an opportunity, a number of men in the Coldstream guards who worked in the barracks with me, particularly one Mr. Marsden who is in Westminster now; I worked for him a length of time. After this, my lord, I went from Cambray to Lisle, where I worked for a space, I suppose, of about eighteen months; I worked for an English master who then worked there, a man of the name of Pulsford, two or three months, till I obtained a little money, and then came to England. I knew nothing of Adams. I settled myself when I came home. My wife heard that me and my son were assassinated in France, and she had lost her senses, and I found her in St. Luke's when I came home; but, however, as that is not to the purpose, I shall not proceed with it. My wife, shortly after that, came out; I obtained a seat of work from a master whom I had worked for before, and who, unfortunately for me, turned out to be a relation of this very apprentice who has come here to take my life. Trade was very bad, extremely bad indeed. This Mr. Hale, who lives in Castle-street, Holborn, worked chiefly for families in the West Indies; and, my lord, as it has been held up to this court, that he is such an undeniable and respectable witness, and that his relations are master tradesmen, I will advert to some few circumstances which come within my recollection concerning his family. It must be well recollected by several gentlemen in this court, that John Hale (the brother of this very man, who put this boy an apprentice to me), some years ago, under a false name, took a large warehouse in Ironmonger-lane, and after that decamped with a ship load of goods, and swindled the merchants of London out of 100,000*l*.

Lord Chief Baron.—You should not go into the character of persons who are not before the court; there is no evidence of this.

Prisoner.—I beg pardon, my lord, for intruding on your indulgence, or that of the gentlemen of the jury; it is only to prove to you of what descendants this boy is; he has been a villain to me, which I can bring evidence in the court to prove, but I will pass over that. This relation of his that I worked for, I would wish to impress upon your mind, wished me to take the boy apprentice; I had the boy on liking; I wished to avoid taking him, but I could not without losing my bread, and even if I should be discharged from this place, I do not know where I shall get work, that is the reason I took this boy, with a promise of seven years work with him, as he had numbers of relations masters; but shortly after I had taken

him, after he had been bound a short time to me, I was thrown out of work; this relation curtailed my wages; I put up with it once; he wished to curtail me again, which I could not put up with any longer. I was obliged, my lord, to leave my work, and go into another neighbourhood to live; this landlord will come forward if it is necessary, but I have not an opportunity of bringing any one forward, or I would bring numbers forward. I went to live in the neighbourhood of Fox-court; before I lived in Shoe-lane; however I was fortunate enough to obtain pretty well of work, but the worst of it is, that this boy has lost it for me; he spoiled it for me; positively I can bring men into this court, masters, particularly Mr. Smith of Southampton-buildings, who works for Mr. Birnie, and who has been had up I know, for my wife told me he has been had up, and he will give me a good character for work, and every thing he knows of me. This has caused my apprentice and me to have frequent disputes, his spoiling my work.

My lord, about eighteen months ago my wife was not very well, and she had a separate lodging out of town, and this boy went and robbed her of a book, which I detected in his pocket. I did not punish him, but only gave him an admonition; since that he has been in the habit of going about to take the lives of such individuals as me; he has been in the habit of going about and thieving, which I can prove to your satisfaction, I could bring two boys into the court now, who lived upon the same spot with me, but they are afraid of implicating themselves; and my wife, poor creature, has never been well since she was out of her mind, and is quite out of ability to come here. He went to a butcher's shop and stole a steel, and sold it to a master for whom I worked, (and who will appear with the steel), to a Mr. Bacon, in Kirby-street, Hatton-garden; this can be proved, my lord, beyond doubt. Not content with this, my lord, he was at other kinds of robbery; he was charged in Gray's-inn-lane with robbing a gentleman of his watch, and he was taken into the Guy earl of Warwick public-house; the landlord knew me very well; he directed the gentleman to take him there, being an artful boy, and I knowing the landlord, the landlord persuaded the gentleman that he must be mistaken for that he knew his master well, and he got liberated by that means. My lord, I do not know that it is altogether to the present question for me to name it, but two years and a half ago he had a brother died under sentence of death here, in this very prison; this is nothing to his credit, but what I have stated to your lordship before, I can prove; I can bring the people forward to prove it. My wife went to the butcher's, but he hesitated, and would not acknowledge to any thing of the sort, but the steel can be produced, and could the boys be promised that they would not be punished, they would come forward; and not only this, but he is a villain to his associates, for he sold

the steel for 3s. 6d. and he told the boys that he sold it for half a crown, and robbed them of a shilling; this I hope, my lord, the gentlemen of the jury will weigh.

Then, gentlemen, as to Hiden, I know nothing of him; I never saw him in my life to my knowledge; that, my lord, is all I wish to say, except reading a part of this defence which I have not looked over at present [*refers to the written defence*]. I beg your pardon my lord, I wish to advert to a person of the name of Edwards, who is the first individual who ever drew me into this snare; this Mr. Edwards, my lord, I first saw in company with Thistlewood at the White Lion in Wych-street, Clare-market, or Drury-lane; it runs into Drury-lane; this Edwards shortly after called upon me at my lodgings in Fox-court; I was very short of work, and he used frequently to call upon me, twice or three times a day, long before this room was taken which has been so much the subject of the present trial; this room which was unfortunately a back room on the same floor as I lived; this Edwards, even if I was not at home, would call again; if I went to a shop after work, he would even come and wait for me till I came out, which I can prove by Mr. Smith, who said "Is that a person waiting for you, why do not you call him in?" This man, my lord, harassed me, and even at times supplied me with money; he told me, which I can bring other people to prove, could they be called in evidence before you, who have been had up at Bow-street by his suggestion, whom he endeavoured to implicate, but could not; he told them, that if he could get a thousand such persons as me, he knew I was not a man of disloyalty, and he knowing me to be a staunch man, thought me fit to be made a prey of; he has taken persons with me to treat them with eatables and drink; this was his constant practice, my lord, day after day continually, so I may say, for two months, if not more, before I was arrested; this I solemnly declare before God, that he is the individual who has seduced me, and not Thistlewood; I shall advert, my lord, as I stated before, to what passed when I was in Cato-street; I called that evening and before, I will state nothing but the truth; my lord, from the different favours which I had received from Edwards at different periods, I certainly had a good opinion of the man; I will candidly acknowledge, when the officers came up into the room in Cato-street, I made my escape in the best manner I could, though, my lord, I do not say I made my escape as a coward, that I ran off and went to bed, nor as a traitor deceived my fellow comrades; I went immediately down to Grosvenor-square, where I knew this villain was who probably will be the means of my being sent into another world very shortly; I went to that villain, and told him what had happened, at which he seemed very much surprised, but left the square with me; shortly after, up came Thistlewood and another person, who was in the room, but

who has not been taken, nor he never will, I dare say, my lord; however, we proceeded from Grosvenor-square; he took us into several wine-vaults to drink, merely, I believe, my lord, for some persons to identify us, as I have thought since; we went into a house in Frith-street, and from there we proceeded to Holborn, when I proceeded home; I had not been long home, before a man came in, as the apprentice has asserted, and said he had received a violent blow in the side, but the apprentice forgot to tell you that Mr. Edwards was the man who came on the stairs and told us to come out, and we went out to Holborn, and there we met with Palin by chance in Holborn, and three other individuals, and with them I went into Thompson's wine vaults, opposite St. Andrew's church; I drank a small glass of liquor; Edwards came in last, and I believe if I recollect right, that I paid for three glasses of liquor, one for Palin, one for myself, and one for another individual, who was with him; I came out of the shop, and was followed very quickly by Edwards, who called me on one side and told me he wished to speak to me; on hearing what he had to say, he began to find fault with me very much for drinking with Palin, declared that he was the man that had betrayed us all, and that he was unworthy to live; declared that he had prevented ten or twelve men whom he depended on from coming to Edgware-road; that he had sent Potter to Grosvenor-square to watch his movements, and that he was a villain. On that, my lord, we walked, I believe, as far as Little Britain, I think somewhere thereabouts, I am not much acquainted with that part of the town, but when we came into a dark place, near where as he said Cook lived, (but I never was at Cook's place), he urged me again respecting Palin, as Palin was very much intoxicated, he said to me that the safest way will be for us to put Palin out of the world; he urged me, my lord, several times to assassinate Palin; he told me, says he, "you have got nothing I dare say about you," but he put his hand to his pocket, and pulled out a brass-barrelled loaded pistol, and offered it to me to assassinate Palin, and he likewise offered me the sword stick in his hand, saying "if you put him out of the world, every thing will be safe;" he likewise shewed me a constable's staff; says he, "I will act in the same capacity I have been acting in all the evening, in Grosvenor-square, and all will be safe; should there be any alarm given, I will officiate as an officer, and you may depend upon it there will be no discovery." Finding him urge me to commit murder, I made him this reply, "If you are convinced that Palin is a villain, the weapons are in good hands." Finding, my lord, that he could not prevail on me to do the murder, he says to me, "I must bid you good night, for I am going to conduct Mr. Thistlewood to some secret place." As he had always been, my lord, as it were, pinned to the coat tail of Mr. Thistlewood, I thought

him a most proper person certainly, and knowing I had no evil intentions myself against any individual, I was determined not to know where they went, and consented to bid him good night, but not first without an admonition from him; he came on one side again, my lord, and whispered to me, and told me that those things which had been entrusted to Palin and Potter, and some of the individuals, they had done nothing with, and they were taken into the back room my lord, in the house where I lodged. This was a plot to take my life, I have no doubt; he asked me if I would be so good as to tie those things up in the morning, and send either my apprentice or my own boy with a part of them to Palin's, and a part to Potter's in the Borough, with an intent, my lord, as I have conceived since to take their lives, I have not the smallest doubt of it; accordingly, my lord, I got up in the morning, and those things which have been produced here I put in those baskets, as has been given in evidence here by my own apprentice, and tied them up, my lord, but altered my mind respecting sending them, thinking that if they wanted them they might fetch them. This, my lord, is all that I wish to say respecting what I know of the plot; this is all I know; I know that Edwards is the man that always found money; he is the man that went about at the old iron shops and different places, buying pistols, swords, and other things for individuals who could not get money or afford money to buy them; this I declare before that God whose awful tribunal I shall probably be called to attend; and should I die in this cause for having been seduced by the villain who has been employed by government, or he could not get the money, if I die, I will die not unworthy of a descendant of the ancient Britons; sooner than I would betray my fellow men, I would suffer a thousand deaths; this, my lord, is all I have to say.

REPLY.

Mr. Solicitor General.—Gentlemen of the Jury; I rise for the purpose of making some observations, not in reply to the case which has been set up on the part of the prisoner, because no evidence on his behalf has been presented to your attention, but in reply to the observations and arguments which have been so ably and forcibly urged by the counsel assigned for his defence. Jaded as my mind must necessarily be by a continued repetition of the same facts, and a recurrence to the same topics and the same arguments, you will feel that I have upon this occasion a most irksome duty to perform. But we are not assembled here for the purpose of amusement; we are met to discharge one of the most grave and solemn duties that can be cast upon any members of civilized society, and I trust therefore, however tedious this inquiry may prove, if I should be compelled to recur to the same arguments already so frequently urged, you will—for the sake of the public—for your own

satisfaction and peace of mind, when you may look back at some future period to the events of this day—and above all, for the sake of the prisoner at the bar, give me a patient and attentive hearing.

It is in consequence of the privilege which the law has given to the prisoners of severing their challenges, and of course separating their defences, that it has become necessary to recur thus frequently to the facts of this case. I am not complaining of this; it is a right that the prisoners have by the law of the country, and if they conceive that the exercise of it can be of any benefit to them, I should be one of the last men to wish to deprive them of such a privilege. In a case of this description, to think of our own personal convenience or inconvenience, would be in the highest degree selfish and contemptible, and however painful and distressing may be the sacrifice which we are called upon to make, I am sure it will be made with cheerfulness and alacrity.

My learned friend who has just spoken said nothing on the law of the question, but my learned friend who preceded him made many remarks—remarks with which I have no disposition to quarrel—on what he called constructive treason. But we are not here engaged in considering a case of constructive treason. The charge preferred against the prisoner is of a very different character. He is charged, not with constructive, but with plain and direct treason. Disrobing the accusation of all technical terms, it is shortly and plainly this, that the prisoner conspired with other persons to move an insurrection, and stir up rebellion in the country; that he endeavoured to effect his object by means of a most extensive plan of assassination which is not now disputed by his counsel, which is admitted by the prisoner himself in the most distinct terms, and which (with their ultimate object) was to be accomplished by those other means which have been stated in evidence in the progress of this trial.

Now, gentlemen, with respect to the manner in which this case is made out against the prisoner. Mr. Curwood has stated, that before a charge of this kind can be brought home against the accused, he must, according to the language of the statute of Edward, be proveably attainted. I beg leave to subscribe to that opinion, to the full extent to which the learned gentleman would press it. I say, unless you are, by the evidence which is laid before you, clearly convinced that the case is brought home to the prisoner at the bar, it is your bounden duty to acquit him; he must, according to the language of the statute and the commentary of lord Coke, be proveably convicted. It will be for you, then, considering the evidence laid before you unopposed as it has been by any testimony on the other side, to say whether in the proper and fair construction of the terms, the prisoner is proveably convicted of the offence with which he is accused.

A most extraordinary course of argument has been pursued on the other side, and a most

extraordinary assumption adopted. The witnesses for the prosecution, have proved to you that a plan of assassination was formed, which constituted one step towards the accomplishment of a treasonable project. My learned friends say we believe your witnesses; we believe your evidence up to a certain point; we admit that such a plan of assassination, wicked and monstrous as it is, was really formed; but we disbelieve all your evidence beyond that point. This is, indeed, a most extraordinary course of argument, pressed for the first time, I believe, to grave and reasonable men, in a court of justice that up to a certain point (establishing that which is almost incredible in itself, namely, that these persons had combined together to assassinate so many eminent and dignified characters, with whom they had had no personal intercourse, and of whom they had no personal knowledge) you will believe the witnesses; you will give credit to their testimony as far as this point, and all the rest you will reject as fiction and fable. But in pursuing this inquiry we shall see whether my learned friends are entitled to reject the evidence, so far as it relates to the ultimate object which these parties had in view. And when we speak of this being an improbable fiction, to which no reasonable man can give credit, allow me to ask, whether that which my learned friends have admitted, and which the prisoner at the bar has not disputed, is not infinitely more improbable, standing by itself as the ultimate object at which they are supposed to have aimed, than as forming a step towards the accomplishment of that treason which they meditated. For, I do declare, in the language (or rather in the spirit, for I cannot imitate the language) of the learned judge to whom I allude, that it is infinitely more incredible that the prisoner should have engaged in a conspiracy for the mere assassination of his majesty's ministers, than that they should have united in a treasonable design, using the assassination of his majesty's ministers as a step to promote an insurrection and rebellion in the country. I think the assumption on the other side is infinitely more void of probability than that which we state, and which at the same time is proved by the evidence in the cause, whereas the other rests upon mere assertion; you are requested to reject the evidence and to consider all this as fiction merely on the gratuitous statement of the counsel for the prisoner.

Let us, then, look at the evidence as it applies to the case, and see whether, as sober men, judging upon the testimony given upon oath before you, and upon those striking facts which cannot be distorted or denied, this case is or is not brought home effectually to the prisoner at the bar. We have called before you an accomplice:—Not but that the case is made out in its general character and plan without his evidence. I have already, to some of the gentlemen I have now the honour of addressing, stated what I take to be the just

principle by which the evidence of an accomplice is to be examined. First, I consider the previous character of the individual. This man has been known to the prisoner for a long period of time. The prisoner is now, in his defence, casting imputations on his conduct: but is there any evidence to impeach the character of Adams? The name of Adams was in the list of witnesses delivered to the prisoner upwards of four weeks from this time; witnesses might have been called for the purpose of discrediting him, and of saying that he was not a man to be believed upon his oath. Nothing of that kind, however, has been attempted; but it is said that he has been a disbeliever in the Christian religion, and his having renounced those errors at a late period is supposed to throw a doubt upon his evidence. That observation, if my learned friend will give me leave to say so, shews a deplorable ignorance of human nature and of the character of the human mind. That this man was led astray from his faith by the pernicious writings of Paine he admitted, the moment the question was put to him. But we all know that when principles of religion are early in life implanted in the mind they never can be entirely eradicated. In moments of distress—when the illusions of life are withdrawn—when sickness, calamity, and particularly when the danger of death stares men in the face,—then it is that they fall back again to the consolations of religion;—then it is that they see the folly of the errors which they have committed;—then it is that they cling again to that faith which is man's best hope and security in the season of distress and sorrow. Is it unnatural, therefore, that Adams,—who is now designated by my learned friend for the first time as a spy (but of which there is not the slightest evidence in the cause), who is supposed to have been employed by government, for the purpose of attending those meetings (but of which there is not any proof, or the slightest foundation in fact; for he was not apprehended till the Friday, nor was his name known to the government till he was so apprehended)—Is it at all surprising that such a man, when he was apprehended, and when he foresaw the consequences of the situation in which he was involved, should have perceived the error of his ways, and that regret and repentance should have followed? What my learned friend, therefore, ridicules this change as inconsistent and improbable, he ridicules that which a moment's reflection must have suggested as the natural consequence of the prisoner's situation; and he shews that, in this respect at least, he is unacquainted with the workings of the human mind.

Again, as to Adams, what is his interest in the cause? A man does not come into a court of justice to commit perjury, unless he has some motive of interest actuating and swaying his mind. Bad and degraded as a man be, he will not commit perjury for the sake of the crime; and still less will he do so when it is to

lead to consequences of such a nature as would follow upon the present occasion. He is apprehended, he is conscious of his guilt; he is told he may be a witness for the Crown; terms are not made with him, because that is never done; he is merely informed, that he may be a witness for the Crown. Of course he expects his pardon; but it is upon one condition only: That he falsifies the fact? that he states that which is untrue? that he aggravates the charge against his associates and himself? no: but that he states with truth all that he knows. What motive then has he to come forward for the purpose of stating that which is untrue? He blackens his own character in the same proportion in which he criminales his associates. He was one of the willing partners of their crime; why then should he state the offence to be of a different nature from that which was really committed? I can understand that he may have a motive in lessening the atrocity of the crime; but I cannot understand any motive operating on his mind which would induce him to represent it as of a blacker and more infamous character, than it really deserved.

Again, when you are considering the evidence of a man in the situation of Adams, you will inquire, could he, if he has spoken false, be contradicted? Over and over again that challenge has been thrown out to my learned friends; they might have called witness after witness for the purpose of contradicting him if the story he has told were untrue. There is a witness of the name of Hall now within their reach who attended all these meetings; there are other witnesses who have been named, whom he has stated to have been present at many of those meetings, and who might have been called either for the purpose of disproving this fact, or of proving, if they really did attend the meetings, that the object of the meetings, and that what took place at them, were different from what Adams has represented. Why, then, are not those witnesses put into the box? If the story told by Adams is false, why does not the prisoner at the bar call his own associates for the purpose of showing, that he is not guilty of the charge imputed to him, and that the account given by Adams, of what passed at the meetings, is false?

But let us look to another part of the case, to the confirmation of the story which he has told. When you are desirous of knowing, whether an accomplice is speaking the language of truth, you examine his evidence by this test; you say, "if the account be true, it may be confirmed in such and such particulars. It cannot be confirmed in all, because there are circumstances to which the witness and the prisoner, could alone be parties." Let us then see, whether he is confirmed in those things in which his evidence admits of confirmation. Try his evidence by that test, and you will see it is confirmed, not in trivial particulars, but in those which constitute the very essence of the crime imputed to the prisoner at the bar.

Gentlemen, I am desirous of sparing you—I am desirous also of sparing myself—the fatigue of going through this detail. We have adverted again and again to these facts, and I shall touch as lightly upon them as possible, knowing that the evidence will be summed up, and that you, from the attention you have given to it, will apply the general observations to the facts as they arise, and see how they are borne out by the evidence in the cause.

A witness has been called of the name of Hale who was unassailed until you heard what fell from the prisoner at the bar; to whom not a question was put on cross-examination, and who told his story in a manner calculated to raise no suspicion as to his veracity. But when the examination is over, and the witness has left the court, the prisoner at the bar, relying upon his own assertion only, states that the witness upon some former occasion had disgraced himself, and that he is not worthy of credit, nay, more with an injustice peculiar to this case, endeavoured to load him with the supposed guilt of his relations and his friends. But if the imputations attempted to be cast upon him were well founded, why were not those imputations communicated to my learned friends, that the questions might have been fairly propounded to him, and that he might have had an opportunity of denying or admitting the correctness of the charges made against him? I am sure that the assertions of the prisoner, made at this late moment, will not in the slightest degree detract from that attention which I am sure you will be disposed to pay to the evidence of Hale. You observed the mode in which he gave his evidence; was there any thing in it to lead you to suppose that he was influenced by any malicious feeling towards his master? Did he not give it in the most becoming and proper manner? And may I not repeat again, that no man, attending to that evidence, could entertain a particle of doubt as to its truth?

Then, how does that evidence confirm the testimony of Adams? It appears, that the room was taken—that the parties assembled there for a period of five weeks—that the persons so assembling were correctly described by Adams. Adams states, that it was proposed that a more numerous meeting than usual should be held on the Sunday, to arrange some plan, in consequence of the suspension of the cabinet dinners. Hale confirms this. He says, that a meeting, more numerous than usual, did take place on the Sunday, and though he was not admitted into the room to be able to explain what passed at this meeting, is it possible you should not consider this as confirming in the strongest manner the testimony of Adams? How could Adams, when he told his story, know that the facts stated by Hale would afterwards come out in corroboration of the truth of it? He has had no communication with the witness Hale—he has been in custody. Hale of course has been at large. Adams—

therefore could not have invented the facts which he has stated, with a view to create a correspondence with the evidence of Hale, since he could have no knowledge of what that evidence was to be.

There is another circumstance to which I beg your attention. Adams states, that on the afternoon of the day when the blow was to be struck, some persons came into the room of the prisoner, in order to prepare their arms. Hale states that he was in the room at the time, and he describes all the particulars, exactly in the same manner in which they had been previously stated to you by the prisoner, Adams.

Now, gentlemen, give me leave to direct your attention to that remarkable fact to which my learned friend, Mr. Curwood, has adverted, namely, the proclamation; and I direct your attention particularly to this, because it is of such infinite importance in the cause. There were no materials prepared for writing the proclamation. Application was made by Thistlewood to Brunt, and Brunt was desired to procure cartridge paper for the purpose. Adams says, Brunt went out of the room, and in a short time the paper was brought in, and the proclamations were written. The apprentice tells you precisely the same story; it is true he was not in the room to know how the paper was to be applied, but he got the paper at the desire of his master, and it was carried into the room. Thistlewood wrote the proclamations. They are in these terms: "Your tyrants are destroyed. The friends of liberty are called upon to come forward. The provisional government is now sitting." The prisoners were not taken by surprise as to this proof. Notice was given to them to produce the proclamations, but they in answer suggest that no such proclamations ever existed. Let me recall to your attention the particular facts, and see how decisive they are with respect to this part of the case. First of all, observe the manner of Thistlewood. While he is in motion, and in a state of excitement, he betrays no want of firmness. He fixes his attention to write the proclamations, and after he finishes three of them his spirits subside, from the nature of the employment in which he was engaged. Now mark the effect. Adams never could have invented it; it was the natural result of the situation in which this unhappy man was placed. He became all at once extremely agitated, so much so that he could not complete what he had undertaken. No man could have invented a circumstance of this nature, though, when it is stated by the witness, it appears so natural and obvious, that it at once carries conviction to the mind as to the reality of the story. It speaks volumes upon the subject. In consequence of this uneasiness, what did Thistlewood do? Hall stood by; he desired Hall to take the pen, and Hall refused. Is this story true, or a fabrication by Adams? If it be false, Hall might have been called for the purpose of contradicting it. I ask you, Hall not being called

by the prisoner at the bar, whether you can entertain a doubt that the story told by Adams is in this particular true. My learned friend says, Hall would be in jeopardy if he were called. That is incorrect; he would be exposed to no risk. If he was not at the meeting, he would contradict Adams; if he was present, the question being asked him, whether such a proclamation was written, he would answer no, if in point of fact it was not written. If any question were asked tending to criminate himself, he might refuse to answer it; but if in reality such a proclamation was not written, he might have so stated, and in so doing could run no possible risk, by questions from the counsel either for the Crown, or the prisoner. Is this or is it not then confirmation of the most convincing nature, with respect to a fact decisive of the case spoken to by Adams, confirmed by the apprentice, and not disproved by Hall, as it might have been if it were untrue.

Let us go further. The parties proceed to the meeting in Cato-street; Brunt effects his escape, Adams is not taken by the officers. The prisoner at the bar confirms this by his own statement in the course of his defence. Nay, he does more, he confirms also the account given by Hale. He tells you that he went out, and returned at nine o'clock in the manner Hale has described, covered with mud, and that another person came to him. Now, gentlemen, as to the preparations in Brunt's lodging. On that very evening and on the following morning are found materials, not for the execution of the plot in Grosvenor-square, for every thing to be made use of in Grosvenor-square had been removed to Cato-street; but in Brunt's lodgings are found fire-balls—in Brunt's lodgings are found cartridges for the cannon—in Brunt's lodgings are found grenades, none of which were to be used in Grosvenor-square, but all of which were evidently intended for some other operation. The officer who finds these proceeds immediately afterwards to the dépôt at Tidd's, and there he sees what puts an end, as it appears to me, to every doubt as to the nature and extent of the design. You may disbelieve Adams, you may disbelieve Monument, but you cannot escape the inference to be drawn from these preparations. Upwards of 1,200 rounds of ball-cartridges are produced to you. It is said that there was a conspiracy to assassinate his majesty's ministers. Were these 1,200 rounds of ball-cartridges prepared for that purpose? *res ipsa loquitur*, the thing speaks so strongly, that it is impossible any man can entertain a doubt upon the subject. But it is said this is so extravagant a project, that it is utterly incredible. But did the prisoner consider it to be a visionary project? I am sure you have not forgotten what was passing in the mind of Thistlewood. He told Monument that the people were everywhere desirous of a change. It was afterwards said by Tidd to the prisoner Brunt, that

if they could but throw things into confusion for a day or two the measure would become general. The precise expression I do not at this moment recollect, but he said it would become general. They did not rely, therefore, upon their own strength, upon their own resources, upon their own numbers for the purpose of accomplishing the ultimate object they had in view; but they looked to that feeling and disposition which they believed to exist among the labouring classes in this metropolis. In this I believe in my conscience they were mistaken; but they imagined that if they struck this great blow, that if they excited a momentary confusion, and suspended for a short time the functions of government, a general rising would be the result, and disorder would be everywhere prevalent; and they hoped that they might "ride on the whirlwind, and direct the storm." I have no doubt that was the object which these parties had in view; and we are ourselves feeble reasoners, we are visionary men, if we estimate the nature and character of their plan solely by the extent of their own numbers, and the immediate means they had prepared for the accomplishment of their object.

When we are raising an argument founded upon the visionary character of this project, we cannot look to what has been passing within these few weeks in our own country, without perceiving how utterly unsound such reasoning must appear. If we look to the north of this island, and to the events which have recently occurred there, or if we only call back to our minds what took place in the county of Derby, in the year 1817, where a plan was formed infinitely more wild than the present, but the reality of which was distinctly proved by the most unequivocal and satisfactory evidence, we cannot say that it furnishes any argument against the truth of the evidence, that to prudent calm and reflecting minds the ultimate purpose of this scheme must appear wild and visionary.

If in the course I am pursuing, I should fatigue your attention, you will consider the infinite importance of the question to every one of us, and in particular to the prisoner at the bar. I beg then to advert again to the evidence of Monument; I do it for the sake of Monument himself. Admirable is the institution of trial by jury; the witnesses are not examined in a corner; they give evidence in the presence of the prisoner, and in the face of those who are to decide upon the credit due to their testimony. I ask you, then, to recollect the manner in which that witness gave his testimony; I ask you, whether you can doubt for a moment from the manner in which he gave his evidence, the truth of the story which he told: he told you that when Thistlewood called, he mentioned to him that great events were at hand, that the people were dissatisfied with the existing order of things, and that every thing portended change. When, therefore, my learned friends say that

all that these parties had in view was the assassination of his majesty's ministers, or that the further object was merely plunder, is not this directly negatived by the evidence? That every body was desirous for a change! a change in what? evidently a change in the constitution and laws of the country. Gentlemen, he tells you, that he was induced to attend this meeting in Cato-street; he tells you what passed at that meeting, and in so doing, he confirms in every respect, as far as he had an opportunity of observing, the testimony of Adams.

There is another fact which my learned friends have treated as a very light circumstance, but on which I would say a few words; for it is from circumstances which arise accidentally in the progress of a case of this kind, and which are accidentally confirmed, that the firmest support is given to the evidence they are intended to maintain. You recollect it was a mere accidental circumstance occasioned by something which Adams had stated at the meeting, that the watch was appointed at lord Harrowby's. It was no part of the original plan. He stated who the parties were that first composed that watch, and by whom they were afterwards relieved, and you find this confirmed by the watchman, and by what took place at the public-house, where the lad played at dominos with the prisoner. Every step that we take in this case tends to confirm the story told by Adams. Did he invent this tale? If so, we should have found him contradicted throughout; but the more we sift and search and examine, the more completely and fully we find him supported and confirmed.

I pass over a great deal, because I will not fatigue your attention. My learned friend reminds me of Monument's brother. He confirms Adams, and he also confirms the testimony of his brother. He tells you that Brunt called at his lodgings. Now mark the conversation, for this is a most material circumstance. "Our plans," the prisoner said, "have been suspended, in consequence of the death of the king;" have they had any communication with Adams? none whatever. But Adams tells you the same fact, that the plan of general assassination had been interrupted by the circumstance of the death of the king, which had suspended the cabinet dinners. Thus, every thing as it happens accidentally to occur tends to confirm the testimony of Adams.

Then, we come to the evidence of Hiden. My learned friend would persuade you that Hiden was an accomplice; one of the most extraordinary and unfounded assertions I ever heard made. On what ground does he assert that Hiden is an accomplice? Because he attended two meetings of a shoe-makers' club in Round-court. I will admit, that those meetings were held for the purpose of reform. He went with a man of the name of Clarke, and invited a man of the name of Bennett,

and if my friend pleases, I will admit that he told Bennett something was to be done for the good of the country. Hiden might be a friend to reform. Is that to be a subject of reproach? Through what means was it to be accomplished? Does it appear that there was any thing criminal to be transacted at the club? There is not the slightest proof to that effect, and yet if any thing had been done or intended in which Hiden was implicated, my learned friends were in possession of abundant evidence to establish it. God forbid that a man should be considered as an enemy to his country because he is a friend to reform—to reform to be effected by lawful means. But a communication was made to Hiden, and why was that communication made? because Wilson had known him for some time. He had intelligence no doubt that Hiden had attended those meetings, and conceiving he was a friend to reform, conceiving there was some disposition lurking in his mind adverse to the institutions of his country, when the plan is just ripe for execution, and when he conceives there can be but little danger in the communication, he acquaints him with the scheme. How does Hiden conduct himself? Does he bury the secret in his own bosom? does he adopt it? he tells Wilson indeed, that he will be one of them. But why? because, knowing the desperate character of the individuals concerned in the enterprise, he knew he should have been exposed to personal risk and danger if he had refused. He therefore assented to it; but to shew by what spirit he was actuated, he immediately wrote the letter to lord Castlereagh, and made that communication to lord Harrowby, to which his lordship has spoken, and yet after all this he is to be stigmatized as an accomplice, and as such undeserving of credit. He is desired by lord Harrowby to meet him on the following day. Such was the alarm and terror created in his mind, that he was afraid of meeting him. It was proposed therefore that he should attend in a retired and sequestered part of the park, and there he renews the communication, and details the particulars of the plan. He afterwards sees Wilson at about four or five o'clock, and Wilson then lets him further into the project. He enumerates some of the circumstances to you. He tells you there were to be four divisions; that the cannon in the Artillery-ground were to be seized; that the cannon in Gray's-inn-lane were to be taken; that the parties were to proceed to the Mansion-house; and he relates all the leading particulars of the plot. If this be a fable, it is one of the most extraordinary coincidences that ever existed. Had Hiden ever seen Adams? had he ever had any communication with him? Adams tells you the story which, as it turns out, corresponds precisely with the story communicated by Wilson.

Now, gentlemen, reflect upon this strong body of confirmatory evidence. Do you or do you not believe the truth of the story? do

you or do you not believe the evidence of these witnesses? Look to what took place in Cato-street; look to the preparations at that place; they were directed to the accomplishment of a part of the object; look to the preparations in other quarters; they were directed to the execution of the further objects of the conspiracy. Look to the conduct of the parties in Cato-street, and to the resistance they made. Do you or do you not believe the story? "Yes, say my learned friends, we believe the story, but we believe it only as to the plot of assassination. The prisoner at the bar, and about twenty of his associates, combined together for the purpose of murdering his majesty's ministers, without any further object, without any assignable motive, not knowing the greater proportion of the individuals who were to be the victims of their treachery and cruelty." Can you believe such a thing? I can easily believe, when men are pursuing criminal purposes in the way of resolution, that human life becomes comparatively unimportant; that they do not allow such sacrifices to be any impediment to the execution of their designs; the end at which they are aiming, in their view, sanctifies the means by which it is to be accomplished. But I cannot bring myself to believe, that a number of men could unite together, to murder in cold blood, for no object that can even be suggested, but from malignant feelings alone, such a body of distinguished individuals. As a means to accomplish revolutionary designs, I can understand it; but I have not a mind capable of understanding how such a conspiracy for the purpose of murder alone, could possibly have been formed. We have been told of their feelings of enmity and revenge, against whom? against the nobleman whom you saw giving evidence yesterday. In what way had he given offence to the prisoner at the bar and his associates? they knew him only by name. If they had inquired further, they would have heard only of the virtues and talents by which he is adorned. My learned friend, the Attorney-general, mentioned the name of the distinguished individual at the head of his majesty's government, who, as if by common consent, has been uniformly spared amidst all the bitterness and rancour of party and faction. Again, gentlemen, that illustrious commander, who had so frequently led our armies to victory—he to be an object of enmity and revenge to Englishmen, he who had so raised and exalted the name and character of our country, who had thrown into the shade the glorious deeds of past times, and realized whatever of glory our wishes or our fancies had conceived; that private hatred and revenge should have influenced the minds of the prisoners to such a deed, I should have supposed it impossible even to state in the presence of men of sense and reflection, still less could I have supposed that such a suggestion could have been made without even the semblance of proof, to support it.

But again it is urged (and that is a new supposition) that all this was for purposes of plunder: were such preparations ever made for such an object? But let me ask, what is there in the character of the men engaged in this affair, that should lead you to suppose plunder was the object. Let me recall your recollection for a moment, to that unhappy man the leader of the whole design, Arthur Thistlewood. Is there any thing in his character to induce you to suppose, that he intended merely a scheme of plunder? Is he not only to be convicted as a traitor, but is he to be stigmatized as a felon and a thief? Fallen as he is, let us not sink him still lower; we know the feelings by which he was influenced, that he was inflamed by strong political passions, and we know therefore, that he might have headed a band of men with a view to revolutionary objects; but there is nothing in his character or conduct, to lead you to suppose that he would have become a leader of banditti for the mere purposes of general plunder.

Gentlemen, I beg your pardon, for having detained you so long by my remarks upon the evidence in this case; but it is a case of infinite importance, for though the inquiry into this conspiracy has been pursued twice before, yet the prisoner at the bar is not to be prejudiced or affected by the result of former verdicts. He must be tried by the evidence which you have yourselves heard in this cause, and is entitled to the benefit of those observations which you have heard so eloquently urged by my learned friend. His fate must depend upon the impression made upon your minds by that evidence, without reference to what you before knew or may have heard upon the subject; and it is for this reason that I have gone through this case at some length; it was my duty so to do; I have been heard with patient attention; and as far as we are concerned, our duty is at an end. A part, an important part of yours is still to be performed. You stand between the prisoner on the one side, and the Crown, the prosecutor, on the other. Sworn to administer justice impartially between them, sworn to do justice to the prisoner, sworn to do justice on the other hand to the public, I have no doubt whatever that you will do so, and whatever may be the issue of your verdict, I for one shall be content.

SUMMING-UP.

Lord Chief Baron.—Gentlemen of the Jury;—It now becomes my duty to request your patient attention; and I proceed to address you in the perfect confidence that you will discard from your minds every impression that has not been made in the course of the present trial. By the indictment the prisoner is charged with the crime of high treason. Gentlemen, you find four counts; I shall take the liberty of drawing your attention to only two of them. The first is that the prisoner, with

others, compassed, imagined, invented, devised and intended to deprive and depose our lord the king of and from the style, honour, and kingly name of the imperial crown of this realm. The other to which I shall beg leave to call your attention is the third count, that the prisoner, with others, compassed, imagined, invented, devised and intended to levy war against our lord the king in his realm, in order, by force and constraint, to compel him to change his measures and counsels.

The crime of high treason imputed by these counts, consists in the imagination and intention, and that intention is to be proved by what are called overt acts, which are stated in the indictment; and if those overt acts or any material parts of them are proved to your satisfaction, there is no doubt but that they support the charge of high treason in each of those counts.

I am happy to relieve you from the notion that was attempted to be thrown in your way, that there is in this case any question of constructive treason;—there certainly is none—the question here is merely whether these imaginations and intentions, which are in themselves treason, are proved by the evidence; and I think I may go further and say now, that the question before you is entirely free from any legal perplexity, and that it depends entirely upon whether you believe the evidence or not.

That there has been a conspiracy is not only indisputably clear from the evidence, but it is admitted distinctly by the learned counsel for the prisoner, and by the prisoner himself—it is admitted, and it is also proved, to have been a conspiracy formed for a most nefarious purpose—it is admitted that it was a conspiracy founded in the diabolical intention to destroy his majesty's cabinet council;—fifteen of those persons who transacted the principal affairs of government, and who, in their individual characters, are perhaps some of the most honourable and most amiable of his majesty's subjects, against whom there had been no personal indignation on the part of any body. If, however, this terrible purpose was the *only* purpose which this conspiracy embraced, there is no high treason in it, because the object is confined to the destruction only of those fifteen noble lords and gentlemen; but it is contended that this particular purpose formed one of the steps to the general scheme of subverting the constitution; and, gentlemen, in the consideration of the evidence, you will have to decide to which side that evidence is to be applied.

I will now proceed as carefully as I can to read to you all the material parts of the evidence. I shall begin, of course, with Robert Adams, and proceed with the witnesses in the order in which they were presented to you. But before I read the evidence of Robert Adams, I will detain you for a few moments upon the subject of his particular character. He is, beyond all doubt, an accomplice contaminated by the crime, whatever it may be,

of which the prisoner at the bar was guilty; for the prisoner at the bar admits that he was guilty of a crime, but not of high treason; the accomplice being a partaker of that guilt, whatever it may be, ought to be looked at with that care and jealousy, which are necessarily excited by a person of that description; but, in point of law, he is an admissible witness. Whether he is to be believed is another question, and will depend upon other circumstances. I shall first state the testimony which he has given, and then in proceeding with the other witnesses, you will see how far you will be of opinion that credit is due to him. At present, however, we must consider his evidence with great attention; because, if it be believed, it is of very great importance indeed in this very important case.

Robert Adams says, he is a shoemaker, that he is at this time a prisoner in custody, that he lived before he was taken prisoner, at No. 4, Hole-in-the-wall passage, next house to Tidd's; that he was in the army eighteen years ago, in a regiment of horse-guards; that he knows the prisoner Brunt, he is a boot-closer, he became first acquainted with him at Cambray in France, in the year 1816, at that time Brunt went by the name of Thomas Merton; they were both at the head quarters of the British army, and there the witness followed his business of a shoemaker, serving our army; that early in the present year, he called at Brunt's lodgings in Fox-court, Gray's-inn-lane; Brunt and Ings on the 12th of January, introduced the witness to Thistlewood. Thistlewood lived in Stanhope-street, Clare-market; on entering the room when Brunt and Ings introduced him, "Brunt said to Thistlewood, here is the man I spoke to you about; then Thistlewood said to me, you belonged formerly to the Life-guards, did you not? I said, no, to the Oxford-blues; he said, no doubt you are a good soldier? I said, I was once; he said, you can use your sword well? I said, I knew how to use a sword formerly, but for want of practice I cannot use it so well now, but I can use a sword sufficiently to defend myself. Thistlewood then turned his discourse upon the shopkeepers of London; he observed, they were a set of aristocrats altogether, they worked under one system of government, and he should glory to see the day when they should have all their shops shut up and well plundered; then he turned his discourse towards Mr. Hunt; he said he was not a friend to the people, and he had no doubt, that could he enter Whitehall and overlook the government books, he should find Hunt's name as a spy of government; and then he spoke of Cobbett, that he with all his writings was no friend of the people; and he said, I have no doubt, if I could see the same books, I should find he was a spy as well as Hunt; then Brunt said, he had a couple of other men to call upon, towards Carnaby-market, and asked Mr. Thistlewood whether he would walk with him to see the men; Thistlewood, however, did not go; there was

a word or two between Brunt and Thistlewood, about attending a raffle for a blunderbuss with a brass barrel. I do not recollect that Mr. Thistlewood said he should go, but I and Brunt and Ings left the room, leaving Thistlewood behind. I was soon afterwards taken to prison for debt, I staid in prison until the 30th of January, which was the Sunday, the day after the late king's death; the next day, Monday, I saw Brunt at the White Hart, which is kept by a man of the name of Hobbs; in the evening I saw him again, in the house in which he lodged, in the back room up two-pair of stairs on the same floor with his own rooms, he occupies two, one of which he works in and another he lives in; I had heard him say, that he had taken that back room for Ings; I attended several meetings in that room, down to the 23rd of February, from the time I left the prison; the meetings were held there generally twice a day; those who usually attended them were Thistlewood, Brunt, Ings, Hall, Harrison who had been in the life-guards, and Davidson a man of colour, and also Wilson, Edwards and Tidd, who lived in the next house to mine. Tidd was also a shoemaker; Palin attended sometimes, but not regularly; I have seen Potter there also; Hall was a tailor by trade. When I came out of prison, I attended the first meeting on the evening of Monday, the 31st of January, that was in this back room.

"On the Wednesday night following, I went again to a meeting in this back-room; Thistlewood, Brunt, Wilson, Davidson, Harrison, Edwards, and Bradburn attended; I saw then in the room a number of pike-staves; there was no furniture in the room of any description except a fixed stove; when we wanted chairs they were brought from Brunt's room; on the same floor; the staves I saw there were rough and green, as if they had just been cut, and just come from the country; Bradburn was cutting the ends of the staves off, and putting on ferrules; after they were all knocked on, it was considered that the end of the pike-staves would not be strong enough to support the pike heads; then they cut the ends off a second time, and Brunt got some larger ferrules, and they were put on; I saw them afterwards put on. A short time before the king's funeral I was there, and I saw Thistlewood, Harrison, Davidson, and Wilson there; Harrison told Thistlewood that he had seen a life-guardsman, and heard from him that all the guards that could be mounted would be at Windsor at the king's funeral, and that as many of the foot-guards and police-officers as could be spared, would be there also; and Harrison said he thought it would be as favourable an opportunity as could be to kick up a riot in London, as he thought the soldiers and officers would be out of London, and there would be scarcely any body in London to protect it. This he mentioned to Thistlewood, when he came into the room. Thistlewood improved upon it in this way; he proposed that two pieces of cannon, which were in Gray's-in-

lance, and six other cannon in the Artillery-ground should be taken on the same night." Gentlemen, you know the question is, whether this was a particular purpose of destroying the ministers, or a more general purpose. The cannon could hardly be wanted to destroy gentlemen in the house at dinner; if, indeed, you believe the evidence concerning the cannon. The witness proceeds to state that "Thistlewood said, that after this should be done, he thought it would be necessary to send to Hyde-park-corner, to prevent any intelligence being sent by an orderly from London to Windsor, to communicate what was going on in London. At the same time he proposed that the telegraph on the other side of the water should be taken to prevent a communication to Woolwich of what was passing in London; and Thistlewood said, he thought it would be necessary, at the same time, to cut trenches across the road to prevent cannon being brought from Woolwich, and he said that the soldiers at Windsor would be so knocked up and fatigued that they would not be able to come from Windsor to London; or if they did come they would be unable to do any thing. Thistlewood proposed that an offer should be made to the soldiers in order to bring them over to us; or if they were determined to act against us, Harrison, who was an old soldier, should employ the hand-grenades to destroy the soldiers. Thistlewood then proposed to send to the different sea-ports, Dover, Margate, Brighton, and I think other ports, with an express order, that if any person was permitted to leave the country, without an order from the provisional government, those towns should be blown down over their heads; that as soon as they could collect force enough, which he had no doubt they should, they should send a very strong force down to Brighton, in case the new king should be there after the riot was kicked up, which he did not suppose he would, in consequence of his indisposition; that they should send this force down in order to plunder Brighton, and as to the new king being crowned as king, Thistlewood said it was all nonsense, for he did not intend that that should ever be. After this Ings and Brunt came into the room, and Thistlewood communicated to them all that had passed, and Ings and Brunt both expressed themselves, that nothing short of the assassination of the king's ministers would satisfy them." The witness then said, "On the 2nd of January, before I was introduced to Thistlewood, as we were walking down the street, Brunt spoke to me about assassinating the ministers." Then he says, "When we began to talk of the assassination of ministers, Ings said, he had been in the park to assassinate the prince regent before his majesty's death; he pulled a pistol from his pocket, and said, that was the pistol that he had taken; he pulled the pistol from his left pocket, and held it out, saying, damn my mortal eyes this is the pistol; he said it was the time when the prince regent went to open

the parliament. When Brunt spoke to me about the assassination, he said, that it was to be done the first time that the ministers assembled at a cabinet dinner.

"On the 19th February, the Saturday, there was another meeting, at which were present, Thistlewood, Brunt, Harrison, Wilson and Ings; this was between eleven and twelve o'clock in the morning. I cannot be sure whether Davidson was there or not; on my going into the room, I found those persons I have named, except Davidson, as to whom I do not know whether he was there or not; I found them sitting with their heads together in consultation. I soon found what they were consulting about, for they got up altogether, and Thistlewood said, it is agreed; if nothing transpires between this and Wednesday night, we will go to work, as we are all so poor we cannot wait any longer; and then Thistlewood proposed that a committee should sit on Sunday morning to draw up a plan to act upon; this was also agreed to. Then Thistlewood told Brunt to tell the men that were to come under his care to come armed; here Brunt said, it is a parcel of nonsense, that if any officer came there, he would execute him in the room, or murder him; he expressed himself in a sort of language not proper to be used, but the purport of it was, that they should be murdered if they did come; Brunt adding, I will take care that it never shall be found out, or to that effect." Then the witness says, that he left them all in the room and went away. Then he says, "before the Saturday, I had seen in the room a sword and some hand-grenades, some of which had been made up in the room; and I had seen pistols pulled from their different pockets; the things were removed to Tidd's lodgings in Hole-in-the-wall passage, which they called the dépôt. Thistlewood wished them to be removed to that dépôt to conceal them from any person who might come into the room, and Brunt carried the principal part of the hand-grenades to Tidd's; I followed him into the room at Tidd's; I saw him place them upon the floor, and Tidd's daughter put them into a box under the window.

"On Sunday morning the 20th, Thistlewood, Ings, Hall, Brunt, Harrison, Davidson, Bradburn, Edwards, Cook, and three other persons, strangers to me, came to this back room; there were twelve of them in all. Between eleven and twelve on that day, Thistlewood looking about and seeing there were twelve men of us, said, there are twelve of us, that is enough to make a committee, and Tidd, was desired to take the chair; he took the chair accordingly, with a pike in his hand. Thistlewood, who stood on Tidd's right hand, said, gentlemen as we have all met here, we have no occasion (turning his head to the door) to mention any names; I suppose you all know what you are met for, and as we have all waited so long with an expectation of the ministers dining together, finding there is no likelihood of their coming together; we are resolved, if they do not meet

before Wednesday-night to take them separately. He then proposed this plan; he called the project to assassinate, *the West-end job*. He said, that the two pieces of cannon in Gray's-inn-lane, and the six pieces of cannon at the Artillery-ground, should be taken; and that Palin should take the command of another party to set fire to different buildings of the town; Cook was to take the lead in taking the cannon in the Artillery-ground; as to the time, Thistlewood said he could not then fix the precise time, but there would be opportunity enough to fix before Wednesday-night; that he thought forty men would be quite enough for the West-end job," that was the assassination of ministers, "if we can get so many; and as to further proceedings on the plan, it should be settled another time, for that Brunt was to come forward with a project about the assassination, and to state how it could be done. Brunt then stepped forward." This, gentlemen, is given to you in the way in which the man states it; he stated it with great particularity, but it is material only as shewing how the business was carried on, and how they conducted themselves in the room. The witness says, "Brunt then stepped forward; but Thistlewood stopped him before he spoke, and said his own motion should be put first from the chair; that if any body wished to speak to it he wished them to speak; the question was put, and Thistlewood's motion carried. Then Brunt came forward, and proposed his plan, which was this—As no signs of getting the ministers all together appear to us, we must take them separately, and it shall be done in this way; our men must be divided into parties, according to the number of ministers to be murdered. The men were to be lotted, and he proposed, that a man from each lot should be drawn out for the purpose of assassinating the particular minister, and if the man to be drawn out did not execute his duty from any signs of cowardice, he should be run through the body on the spot." On this, the witness Adams says, he got up and asked whether a man might not fail in the attempt, and if so, whether he was to be run through on the spot? "Brunt said, certainly not, unless there is proof of the man's being a coward;" then Adams says, he himself sat down. "The question upon Brunt's proposition was put from the chair, and agreed to, in the same manner as Thistlewood's motion was. Directly after this, three other men came in, namely, Palin, Potter, and Strange; what had passed before they came in, was communicated to them; then Palin got up, and asked how the things were to be done, as they had so many objects talked of at the same time; saying, I believe, provided they could be all carried, they would be a great acquisition to what we have in view; but this is what I want to know, you talk, of taking forty men for the West-end job; you talk of taking the two pieces of cannon in Gray's-inn-lane, and six at the Artillery-ground; and you propose

me with a few men to set fire to the different buildings; but you ought to know better than myself what men you can command; I, for my own part, cannot satisfy you what men I can bring forward, unless I am intrusted by this committee to state to them what has passed in this room this morning; if I can have that power to tell my men what they are going about, and when they will be wanted, I shall better know how to act with them. Then Thistlewood, Brunt and Tidd said, they thought no harm would arise in giving Palin that authority which he proposed, if he had men in whom he could place confidence; on this Palin sat down, and nothing particular passed afterwards whilst Tidd was in the chair. When Tidd left the chair, Thistlewood turned round on a sudden, and said, Brunt, as Palin is here, you can take him to the place close by, and let Palin see whether that place is practicable to do or not; Brunt and Palin then went out together, and returned in about ten minutes. Palin said it was a very easy job, and would make a good fire. This," Adams says, "was Furnival's-inn-buildings; Brunt had mentioned this at a previous meeting, as a building to be set fire to; the building was at that time not finished; Fox-court is very near; the people began to separate, saying they had men to call upon. After this Thistlewood still remaining, he said to Brunt, I think that between this and the time we go to work, we had better collect the men together and give them a treat; but I do not know how this is to be done, we are all of us so very poor. Brunt turned round and said, Damn my eyes, though I have done little or no work lately, I have got a one pound note, which I have reserved for the purpose of treating my men, and I will do it. Thistlewood said, he did not know where we could take them to; I suppose we can have the room up stairs at Hobbs's. Brunt said, he did not like to go there, in consequence of what had been dropped from my mouth, of what had been said by Hobbs; then Brunt said, never mind, as time gets so near, I do not see what we have to fear, for if any officers come into the room, we will take care of them; shortly afterwards they separated." Gentlemen, you know what Hobbs had told Adams and Adams had told them was; that officers had been to his house suspecting a radical meeting to be there; this was on the Sunday.

The witness proceeds to state that "there was another meeting held on the Monday, and another on the Tuesday morning about ten o'clock. Brunt was at this meeting, so were Thistlewood, Tidd, Ings, Hall, the witness Adams, Wilson, Harrison, Edwards, Bradburn, Palin, and Potter. On Edwards coming into the room, he told Thistlewood that on the next day (Wednesday) there would be a dinner of the ministers at lord Harrowby's in Grosvenor-square, for he had seen it in the news-paper. Thistlewood doubted this; he said, he had not seen it in the newspaper

he read; he proposed to send for a newspaper, Hall fetched it; it was the New Times; it turned out that Edwards had given them true information; Thistlewood read the paragraph aloud; then it was proposed by Thistlewood to have another committee to alter the plan; Harrison and Davidson came into the room in the interval of the paper being fetched. When Harrison and Davidson came in, Davidson brought a bag of balls, and Harrison some powder; before the newspaper came in, Ings pulled out three daggers; these daggers he said he had prepared with the sole intention of a separate assassination, and he shewed by his action how he intended to cut the heads of the ministers off, using some very coarse expression. After the paper was brought and read, from which it appeared that the ministers were to meet on the Wednesday, Brunt exclaimed, Damn my eyes, now I believe there is a God, in calling those thieves together; it has often been my prayer that they would all meet together, now God has answered my prayer; Thistlewood then proposed there should be a committee, and that I should take the chair; I did so; upon Thistlewood coming forward to explain his plan, I called him to order, and said, before you begin, I hope you have given due consideration to what I communicated to you yesterday morning;" that was what Hobbs had said to him, namely, that there had been two officers there, saying there was something wrong going on in his house. "On my saying this, Palin took it up, and said he wished for some explanation, and that before the business proceeded any further. Upon this, Brunt got up, saying you shall have an explanation, and then he stated what had been said before about Hobbs's information; then Brunt, to obviate any risk, proposed that a watch should be set to observe lord Harrowby's house, the watch to begin at six o'clock that same night; two to go at six and stay till nine, then to be relieved by two others to stay till twelve, and to commence again the next morning at four, and the watch to continue until the next evening, when it was proposed we should go to work; those men were to watch whether soldiers or police officers went into the house at any time, and if so, they were to give notice to the rest; if not, Brunt said the work should be done the following night (Wednesday night). Brunt picked out the men to watch. Davidson was one of the first; he was to watch from six to nine, and Brunt and Tidd to watch from nine to twelve. On this, Thistlewood came forwards as to what fell from Brunt's mouth, and said, if no soldiers or police officers enter the house, I shall propose a plan to take them all together; he proposed to go himself to lord Harrowby's door with a note, to deliver to a servant, saying he must have an answer, and on his being admitted into the house to wait for an answer, he was to be followed by the others, who were to rush in directly afterwards; they were to seize upon the servants, to present pistols

to them, and threaten them with instant death if they made any resistance; at the same time four were to take the command of the stairs; two men to take care of the stairs that went to the upper rooms, and two to take care of the stairs that went to the lower rooms, and each of those four men was to have a hand-grenade in his hand, and a pistol and cutlass; if any attempt was made from the upper part of the house, a hand-grenade was to be thrown amongst them, and in the lower part of the house also, if any resistance was made; two men were to be placed in the area, one with a blunderbuss, and the other with a hand-grenade; after this was done, the others were to rush into the dining room; Ings proposed to enter the room first; he was to be followed by two swordsmen, who were to be Harrison, and Adams; then Ings said he would say this, Now, my lords, I have as good men here as the Manchester yeomanry, enter citizens and do your duty. On this word of command, they were to rush into the room to be followed by Ings with his broad knife, and he swore that he would cut off their heads as fast as he could get at them. The heads of lord Castlereagh and lord Sidmouth he was determined to bring away with him in his bags and he also was determined to have one of lord Castlereagh's hands which he intended to pickle; this hand, he said, would be thought much of on a future day. Ings had said before this, he would exhibit the heads of lord Castlereagh and lord Sidmouth upon a pole in the streets. Thistlewood improved upon this plan, and said, he thought it would be better to put them on a pike, place them behind the cannon, and carry them along the streets, and that they would more terrify the people. On this Bradburn said, that after they were exhibited in this town sufficiently, he would enclose their heads in a box and send them to Ireland. After the business was done at lord Harrowby's, they were to go to the Horse-barracks in King-street, and set fire to the shed with a ball or balls prepared for that purpose. Wilson was to go and support Harrison in that project; from thence they were to proceed to Gray's-inn-lane to the City Light-horse-barracks, to take two cannon from thence; and there was to be somebody there waiting to assist them; they were then to proceed to the Artillery-ground, unless something occurred to the contrary, and to meet Cook at the Artillery-ground; they were to take the six cannon from thence, and after they had got them, they were to load them and bring them into the street loaded; and if Cook found himself sufficiently strong by the accession of people, or otherwise, he was to advance to the Mansion-house, which was to be taken and to be made the seat of the provisional government. The cannon were to be placed, three on one side and three on the other side of the Mansion-house; and if the inhabitants of the house refused to give up the Mansion-house, they were to force their way in, and to make it the

seat of the provisional government. Then they agreed that the Bank of England was to be taken and plundered, but Thistlewood said, he meant not to destroy the books but secure the books, in order that we may be able to see some of the proceedings of government that we are not now in possession of. Thistlewood and Cook agreed between themselves, that if he, Cook, found himself so situated as to be able to go to the Mansion-house, he was to send an orderly man forward to stand against the door of St. Sepulchre's church, to wait the arrival of an orderly to be sent by him (Thistlewood), and these two men were to return to their respective parties with the information they were to give the one to the other; then Harrison said, there should be a counter-sign; the word should be *button*; one man should say *b, u, t*, and if he addressed his friend, that friend should say *t, o, n*; there was to be a man fixed at the end of Oxford-street; one man should say *b, u, t*, another *t, o, n*, and then they would each shew themselves to be of the same party. Harrison said, he would secure a place for the men to go somewhere about the end of Oxford-street. In the afternoon I went to Fox-court again; as I was going up, I perceived a strange smell; on going into the room I saw Ings, Hall, and Edwards; Edwards was making fuses for the hand-grenades; Ings was putting the ingredients for the fire-balls into an iron pot, and Hall was laying paper on the floor in order to receive those balls, after they had been dipped in the pot, to prevent their dirtying the floor. I called again in the evening, and found Thistlewood and two persons who were strangers to me there. In the course of the evening the party were pretty well all there; Davidson went to watch at six, and Brunt and Tidd started about nine o'clock to relieve him; as they were going, I understood Tidd was detained by some other circumstance, and Brunt returned; and as Tidd could not go to lord Harrowby's house, he took me with him in Tidd's stead; we found Davidson on the watch, and relieved him. I went about nine o'clock; whilst we were upon the watch, Brunt and I went to a public-house to take some refreshment at the corner of the Mews, directly at the back of lord Harrowby's house. I do not know the name of the sign; Brunt and I went about twenty minutes past nine, and staid there about an hour and a half. Brunt played at dominos with a young man there." You will see, gentlemen, the materiality of this evidence presently. "About eleven we returned to our watch, and left the place on the turn of twelve; I went out of the public-house once or twice occasionally. On Wednesday I went again to Fox-court about two o'clock in the afternoon; I first went into Brunt's own room. Strange one of the prisoners came in first, then two or three whom I did not know. I then saw pistols in Brunt's private room; they began to try to put flints into them; when the strangers came, Brunt proposed we should go into the other room,

and he and I went there with Strange and the strangers; I saw pistols, cutlasses and blunderbusses there; just after we came in Thistlewood came, and after him Ings and Hall; when Thistlewood came in, he looked round and said, now my lads this looks something like; it looks as if we were going to do something; he clapped his hand upon my shoulder, and said, how do you do Mr. Adams; I said, I am not well, I am low spirited; not on account of what we are going about; says Thistlewood. I said, I wanted some refreshment; and Brunt, by Thistlewood's orders, sent for some gin and beer; and Thistlewood said, he wanted some paper to draw out some bills, large posting bills, such as the paper on which newspapers were printed, but he did not know the name. I proposed cartridge paper; I told him that would answer the purpose; upon this, Thistlewood gave Brunt some money to fetch this paper; Brunt sent for it, and it was brought; then a chair and table were brought in from Brunt's room, and Thistlewood sat down to write on this paper so brought; he wrote three bills; he read what he had written, and the words were these: Your tyrants are destroyed. The friends of liberty are called upon to come forward, as the provisional government is now sitting. Signed, James Ings, secretary, February 23, 1820. Thistlewood, after writing these, expressed himself tired, and seemed to be rather agitated; the bill was written in largish letters; they were to be placed and posted up against the different buildings which should be on fire, or near them, in order to inform the public who might come to the fires what had been done; he then asked Hall to take the pen and write more bills, which he refused; a stranger was then asked; he refused at first, but afterwards did it; afterwards Ings accoutred himself, he first put a black belt round his loins; after that, he hung another over his shoulder; his belt round his loins was to contain a brace of pistols; the one over his shoulder was for a cutlass; he put a couple of bags over his shoulders, in the shape of soldiers, haversacks; on viewing himself, after he had thus dressed himself, he said he thought himself not complete without his steel; he then produced a very large knife, with a very broad blade, and wax-end wound round the handle; he said the wax-end was to keep his hand from slipping; this knife he said, is to cut off the heads of lords Castlereagh and Sidmouth; all the rest took an active part in preparing themselves with pistols and cutlasses, and other things. Then Palin came in; Thistlewood and Brunt left the room a little before five; Palin said, he hoped that all persons knew what they had met there upon; he hoped if they did, that they had given consideration to what they were going to do; he wished them to inform themselves, whether the assassination of ministers was likely to be of service to their country, and the people would come over to them; before doing it, you ought to determine with yourselves to be

true to one another; if it should be proved that any one of you is in danger from the opposite party, others of us should immediately go to his assistance, and if any man flinches, he ought to be run through; he was here interrupted by a tall man whom I do not know, who said, you speak as if all the men in the room knew what they were going to do, but that is what I wish to know myself, and some others; I myself, am not afraid of my life, and no man who turns out on such a thing ought to be afraid of his life. Palin was going to speak, but Brunt came in, and seeing, as I thought, some alteration in the countenances, in consequence of what this tall man and Palin had said, he told him, that he and the others wanted to know what they were going to do. Brunt said, this is not the proper place where you ought to know it; but if you go to a room in the Edgware road, there you shall know all; Brunt added, all those who went with him should have something to drink to put them in spirits; the tall man said, he hoped that no man going on such a piece of business as this, would get drunk; the man who does so puts himself in the hands of his enemy, and is of no use to any body." Then Adams proceeds, and says, "there was a cupboard in the room, in which I have seen a sword, and tar and pitch, and oakum, which are materials for fire-balls, and hand-grenades were kept there till they were removed; I went down stairs alone, and was followed by a stranger; I went to Cato-street that evening; I took a blunderbuss, and a broomstick prepared to receive a bayonet; I met Thistlewood and Brunt in Edgware-road, they took me to the stable in Cato-street; in going through the stable, I saw Davidson and Wilson; Davidson sitting down, and Wilson standing up."

Brunt.—My lord, I beg pardon, but as there are several evidences in the court, and it may operate to the prejudice of my fellow prisoners, I wish to know whether they may not withdraw?

Lord Chief Baron.—Oh, yes, certainly.

Mr. Gurney.—My lord, they are the persons who the counsel for the prisoners consented should remain; they are the officers in custody of the arms.

Lord Chief Baron.—Your counsel know the persons very well.

Mr. Baron Garrow.—It has been made matter of express consent, or they would have retired as the other witnesses have done.

Lord Chief Baron.—Adams then says; "I went up into the loft, I found several men there; the stable is the first building in Cato-street; Cato-street is a little street running out of John-street; you enter it under an archway, and when you get through that archway you turn to your right, and directly into the stable. At the further end of the stable there was a ladder, by which I got up into the loft;

in the loft there was a carpenter's bench, and upon it I saw pistols and cutlasses, and there was also a candle on the bench. When I went first, Thistlewood, on looking about, said, there were eighteen in the room, and two below stairs. I laid my blunderbuss on the bench; there were present then, Thistlewood, Brunt, Ings, Hall, Bradburn, Davidson, Wilson, Harrison, Strange, Cooper and Tidd. They were all the persons whom I knew by name; there were other persons there; they were all preparing themselves with their different arms. After I came, Thistlewood went down stairs, and I afterwards went down stairs myself, and found Thistlewood, Brunt, Davidson, Harrison and Wilson in the stable. When I went down, they turned themselves round and expressed themselves all on a sudden, what good news we have; there are six or seven carriages already come to lord Harrowby's house; and Brunt said, what a rare haul we shall have to night. Tidd had not arrived at that time. We went up into the loft again; but Brunt proposed before we went up again, that there should be a double sentry at the stable-door, and that no one should be admitted unless he would give the counter-sign. When we went to the loft, somebody expressed a fear that Tidd would not come; Brunt said, there is no occasion at all for any fear upon that subject; I will pledge my life that he will come. Ings behaved like a madman, and said he would either hang himself, or cut his own throat, if we did not go through with the plan. Thistlewood said he hoped they would not drop the concern; if they did, it would be another Despard's job. Just after that, Tidd came in. After some little conversation with Tidd, Thistlewood came to the table, and said, suppose lord Harrowby to have sixteen servants in the house, they will not be prepared, and we shall be; and Thistlewood proposed fourteen to be picked out of the twenty men to go into the room. Thistlewood and Brunt then began to pick them out. On this being done, Brunt introduced a gin bottle; he offered me a glass, and he called me out among the fourteen. Some time before this, on Brunt finding the men rather apprehensive that they had not sufficient strength, Brunt came up to the table, and addressed them in a few words; he alluded to those who were in the room, that they did not know exactly the preparations they had got. He said, we have got things here that will blow the house down over their heads; so bent am I on doing the job, that if there were only eight or nine, I am determined on going in and doing it; then, he added, if there were only five or six that will go, I will be one that will do it, and if we find any danger, we will take those things with us, and destroy the house, and perish all together with it. Just at that time, as the gin was going round, after the men were picked out, I heard some noise below; some body came to the bottom of the ladder, and cried, holloa, show a light! Upon this, Thistlewood took a can-

dle from the bench, and looked down the stairs, turned round, and put down the candle on the bench again, and seemed rather confused. Then some officer ascended the ladder, and came into the room; the first word he spoke, to the best of my recollection, was, here is a pretty nest of you gentlemen; we have got a warrant to apprehend you all, and as such I hope you will go peaceably. At this time two officers had entered, and another officer was behind them on the ladder; he cried, let me come up; he came up, and came forward on one side of the room. Those that were on that side of the room sidled off into a little room that there was on the left. I did not observe the officer advance into the room; I went into this little room, and I saw Thistlewood among the men in the little room. On this officer coming into the room, the other rushed towards the door-way. At that moment I saw an arm in the act of rushing forward, and a pistol was fired off directly. I cannot say that I saw the officer fall; the moment the pistol was fired, the candle was out; a great deal of confusion followed; I got down the ladder into the stable, and got away; I went off to my lodging directly; I was taken up on Friday, the day but one after this happened. After I left Cato-street I went home, and never went out afterwards till I was taken; I have been in custody ever since."

He is cross-examined; he says, "the first time I was here, I said when I got home I repented of my iniquities, it was so, I did repent of my iniquities, and before that, I was convinced I was wrong; when I saw the error of my ways, I embraced Christianity again; I had been a Christian down to the time when I read the infernal work of Thomas Paine, which was given to me by Tidd; he was examined further, and at last he got a little warm, and he said 'Brunt contributed to destroy my belief as a Christian; his plan was to destroy the pillars of religion.'" Then he adds "I found a satisfaction in making an atonement to my Maker, for my errors;" then he goes on, and states, "I never intended to commit murder; I thank my Maker I did not commit any; I never thought it morally right to murder any man. On the 2nd of February I heard of a conspiracy to murder the ministers, and on the 12th of February I was introduced to Thistlewood, and joined him to aid in the plot which was communicated to me on the 2nd; it was done through the insinuation of Brunt; but on Tuesday morning before the Wednesday, I went to the meeting, with three others to stop the business, but as soon as I mentioned it by way of throwing any objection in the way, they were all like a set of mad men against me, except those three I had got with me, and though I disapproved of their plan, I did not wish to bring any of them to punishment"

He is re-examined, and says, "Paine's Age of Reason and Carlile's publications perverted my mind;" that, gentlemen, is a disclosure in

such a transaction as this, which ought to make very great impression.

Such is the evidence of this man; the question will be, whether you can give him credit; he is, as I said before, an accomplice; he is to be listened to with great jealousy; but a man is not supposed always to tell an untruth upon his oath because he happens to have been an accomplice in a most nefarious transaction; but you will expect to find a good reason for setting up his credit, standing as he does in the circumstances of a participator of that guilt which is imputed to the prisoner. We will now, gentlemen, proceed to see what the other evidence is; I believe there is no great difficulty in saying, that if this evidence be true, it proves, as far as one witness can prove, the charges made against the prisoner by the indictment now under your consideration.

The next witness is Eleanor Walker; she is the niece and servant of Mrs. Rogers, in Fox-court, at the house where Brunt lodged with his wife and child and apprentice, and in which the back two-pair of stairs room we have heard of was; "Brunt," she says, "lodged nearly a twelvemonth in our house; he occupied the two front rooms in the two-pair of stairs floor; he lived in one, and worked in the other; the back room two-pair of stairs was taken by Ings; I did not know the man's name at the time Brunt introduced him; the room was quite unfurnished." This is what the other witness, Adams, told us; "he said, perhaps he might bring his goods in a week or better, but he never did bring any goods there; my master keeps a shop; the other lodgers enter in at the side door, and they go up and down the stairs without our knowing any thing of their motions."

Mary Rogers is the landlady, and the aunt and mistress of Eleanor Walker; she says, "I did not know Ings's name when he took our lodgings; he paid me for four or five weeks, I do not exactly know which, at 3s. per week;" but observe, Ings took the room at 3s. a week, certainly not to live in. "One evening, when I was about putting my children to bed, I saw three men go up stairs, the middle one I perceived was a black man;" who that man was, she was left to conjecture; "I inquired of Brunt what Ings was; Brunt told me, he knew nothing of him, except that he saw him at a public-house, and heard him inquire for a lodging; he said that he understood he was a butcher by trade;" these lodgings, after they were taken, were never slept in by Ings, and he never had an article of furniture in them, except that there was a stove, which was the property of the landlord; so far, you see, there is an agreement between Adams and these two persons with respect to these lodgings.

Joseph Hale is next called; he says, "I was an apprentice to Brunt, and lived with him in Fox-court; he had two rooms in front, one was his work-shop, the other he lived in: I remember Ings coming and taking the two-pair back room. Brunt went with him to look

at it, and when he had seen it, Brunt told Ings it would do, and said, go down and give them a shilling," that was to bind the bargain, I suppose. "I had known Ings about a fortnight before that day, I had seen him with Thistlewood in Brunt's room;" so that it appears here, that Brunt and Ings were acquainted about a fortnight before Brunt told Mrs. Rogers that he knew nothing of him, except seeing him at the ale-house on the morning of the day when he took the room. "Ings came, and asked Mrs. Brunt for the key; she gave him the key. Hall was with him in the course of the evening; I heard other persons go into that room. From that time, until my master was apprehended, divers meetings were held in that room. I have seen there Thistlewood, Ings, Tidd, Hall, Davidson, Bradburn, Strange, Edwards, Potter, and Adams and others; they were at different times in this room, and coming up and down; my master was generally with them. When I have passed, I have seen the room door open, and, by that means, have seen some long poles, like the branches of trees, rough cut; I saw about twenty of them; the meetings were mostly in the evening. I have heard hammering and sawing in the room; I heard it more than once; they went by their names; Thistlewood was called sometimes *T.*, and sometimes *Arthur*; then, he says, on the Sunday evening before Brunt was taken, there was a meeting rather larger than usual; all the persons I have named were there, and went away one or two at a time; Brunt was with them. When the meeting was over I saw Strange with Brunt, in Brunt's own room. There were meetings also on the Monday, and on the Tuesday," as Adams had said; "on the afternoon of Wednesday several people came; some of them came in the front room. Thistlewood came, Ings came, and Strange was there also about two o'clock; they went first into Brunt's room where he lived, and then came into his work-shop; their employment was flinting the pistols. I did not know some of them; they were strangers; they had five or six pistols, which they were flinting; they did not finish them; one of the men said, the people were overlooking them from the opposite house; Brunt told them to go into the back room, which they did. In the course of the afternoon Thistlewood came out of the back room, and asked me if I could get him a piece of writing paper? I gave him some, and he took it into the back room; after that Brunt came out, and told me to get six sheets of cartridge-paper, and gave me money. I brought it and gave it to him, and he took it into the back room;" this also Adams had told us before; "about six o'clock Brunt left the back room, and came into his own room for the last time, with a stranger, and then they went out together. I heard others go down stairs. After Brunt went, my mistress had occasion to make her tea; her table was in the back room;" and Adams told us the same; "she told me to go and get it, I went to the door and

knocked; a man of the name of Potter opened it, and gave me the table; when the door was opened, I observed four or five more people in the room, and they had a fire; in the course of the evening Tidd called, and came to the front room; Mrs. Brunt took him to the cupboard and showed him a pike-head and a sword, and asked him, what she could do with them? And he said, give them to me, I will take them away; he took them into the back room. After this I heard some persons go down from the back room; this was after seven, and I believe near eight; after this a person came and told Mrs. Brunt, if any person comes here, and inquires for any of us, send them to the White Hart. Shortly after some persons came; they did not know their way to the White Hart, and I went with them to show them the house. On my return from the White Hart, after I had been at the door a few minutes, some other persons came, and they were told to go to the White Hart; I did not go with them, as they appeared to know the way. Brunt came home about nine o'clock in the evening; his dress was disordered, and his great coat and his boots were very muddy; he seemed rather confused; he told his wife that, where he was, a lot of officers had been; he said it was all up, or words to that effect." There is no doubt he was in Cato-street, that is not only proved by the witness, but admitted by himself. "He said, that he had saved his life, and that was all. Directly after this, another man came in, who was a stranger to me. Brunt shook hands with him, and asked if he knew who had informed; this man answered, he did not know. The stranger said, that he had had a dreadful blow on the side, and had been knocked down; and from the manner of speaking to each other, they appeared to have been in the same place. Brunt said, there is something to be done yet, upon this they both went out again together; then, after this, he says, Mrs. Brunt and I went together into the back room; we found in the cupboard several rolls of brown paper, with tar in them, which I have since understood were hand-grenades; also an iron pot that belonged to Brunt;" this is also stated by Adams; "there were some bags there made of flannel, two of them were full of something; in the room there was a long pole also; Mrs. Brunt and I left them there. Brunt came home about eleven o'clock; he told me to get up early, and clean his boots, which I did; he asked me, whether I knew the borough? I told him, yes; he then asked me if I knew Snow's-field's? I told him, no; he directed me to go to Kirby-street, Snow's-fields, to a person of the name of Potter; he said there were some things in the back room; we went together into the back room; we took each a rush basket; he told me to put the things that were in the cupboard into a basket, which I did; one of the baskets was tied up in a blue apron, belonging to Mrs. Brunt, which had been made use of as a curtain to the window of that

room; the other was not tied up; we went into Brunt's own room to look for something to tie that up, and two officers came in and took Brunt?"

Thomas Smart is a watchman of St. George's, Hanover-square; he says, in taking his walk on that night, the 22nd of February, he saw a person of colour, and three other persons, in Grosvenor-square, they looked suspicious; this is with a view to lead to the opinion that Davidson was there, according to what Adams had said of the direction given to him to go there.

Charles Bissix is also a watchman; he says, he saw two men taking particular notice of the houses in Grosvenor-square, about half-past eight or a quarter before nine, on the 22nd of February last; one was a man of colour; they took particular notice of lord Harrowby's house.

Henry Gillan is a young man, a servant of an apothecary, living in that neighbourhood; he says, "I know the Rising Sun public-house at the corner of Adams'-mews, in Charles-street, Grosvenor-square; I was there on the 22nd of February last;" he describes it as Adams had done; he says, "Brunt and Adams came in, they had porter and bread and cheese;" Adams said they had refreshment there. "Brunt challenged me to play at dominos; I stayed there and played two games, and left them both there at ten o'clock;" so that this is confirmation of the fact stated by Adams.

Edward Simpson is a corporal-major of the 2nd regiment of Life-guards; he speaks of the barracks in King-street; he says that Harrison knew them perfectly well; that he had been a soldier connected with them, and that there were some windows, which have been since shut; that the barracks would have been very easily burnt by any fire-balls thrown in at those windows, which would have reached the hay and straw deposited there. That is to show something of a coincidence between Adams's account of the proposed burning of the barracks with the evidence that they might easily have been burnt.

John Hector Morison is a journeyman to Mr. Underwood, a cutler of Drury-lane; he says, "I remember the prisoner Ings coming with a sword to be ground, about last Christmas;" here it is—a small one; "he directed me to grind it sharp from the heel to the point, and likewise the back of the point to be ground; the prisoner Ings called for it about three days after he left it, he approved of the manner in which it was ground, and in about a fortnight afterwards he brought me a very long one; he said the first one was ground to his liking, and I was to grind that in the same manner; he gave me his name, as I understood him, Eames, the first time." Morison has looked at it, and says, that was the sword which he so ground by the direction of Ings.

James Aldous is a pawnbroker; he says "I know the prisoner Davidson; he pawned with me a brass-barrelled blunderbuss in January,

and redeemed it on the 23rd of February;" he says, that he has seen it since, that Mr. Ruthven showed it to him, and that he believes it to be the same that was pledged and redeemed.

John Monument comes next; his evidence requires great attention; he is a prisoner in the Tower;—"I am by trade a shoemaker; I lived, before I was a prisoner, at No. 8, Garden-street, Baldwin's-gardens, which is near Brook's-market; I saw Thistlewood at the house of a man of the name of Ford, three months before I was apprehended; afterwards Thistlewood called upon me in about a fortnight, he came with Brunt; my mother and brother were with me; my brother's name is Thomas; after Thistlewood and Brunt had been in the room some time, Thistlewood said he wished to speak to me; I went with him, leaving Brunt with my brother. Thistlewood said, great events are at hand; people were every where anxious for a change; I have been promised support by a great number of men, who have deceived me, but now I have got men who will stand by me. He then asked me if I had any arms; I said no; he said, every man ought to have arms; all of us have got arms, some a pistol, some a pike, and some a sabre; you can buy a pistol for about four or five shillings. I told him I had no money to buy pistols; he then said I will see what I can do. We returned again into the room, and found Brunt there; and then Thistlewood and he went away together. On Tuesday, the 22nd of February, Brunt called upon me in company with Tidd; my brother Thomas was with me at that time. I told Brunt I thought I had lost him; he said, the king's death has made an alteration in our plans; I asked, what plans; he said there was to be a meeting the following evening, up at Tyburn-turnpike, where I should hear all the particulars. He then turned to Tidd, and asked whether he should give me the name; Tidd said yes, he supposed there was no danger; he then told me that if I came to the place, and found any people about, I was to say *b. u. t.*, and that if they were friends, they would answer *t. o. n.*; he said he should be at our house again in the morning, to tell me more about it, and when the thing was to take place; he did not call the next day till about half-past four; he then came alone; my brother was with me; he called me down stairs, and told me I must go with him in half an hour; I told him I could not go so soon as that; he asked why; I said I had got some work to do, that must be done; he asked me at what time it would be done, and I told him about six o'clock; he said he could not wait so long, and that I must go with Tidd, whom he had brought with him the day before; and he told me where Tidd lived, which was Hole-in-the-wall-passage, leading to Dorrington-street; in consequence of that, I went to Tidd's about half-past six o'clock, and found him at home; he said he had waited for some more people; that he should not wait after

seven o'clock; and that if no one else came before seven, we should go together; no one else came; and at seven o'clock, he went to the corner of the room, and took out a pistol, which he put in a belt that he had got round his body under his great coat; he took about six or seven pike heads wrapped up in brown paper, and a staff about four feet long, with a hole in one end of it adapted to receive a pike head; then we went down into Brook's-street and up to Oxford-street; when we came to Holborn, he gave me the pike-staff to carry; as we were going along Oxford-street, I think it was, I asked him to tell me where we were going, he said I should know when I got to the place; I had asked him before we came out of the room, what place it was up at Tyburn-turnpike we were going to, and he answered at a mews up by Edgware-road; I asked him, whether we were going to the House of Commons? he said no, there were too many soldiers there; I asked him again where we were going, he said, to Grosvenor-square; I asked him whether any one in particular lived there; he said there was to be a cabinet dinner there; no other conversation passed between us that I remember, till we got to Cato-street; we went under an archway; there were two persons under the archway; there were some few words passed between them and Tidd, which I could not understand; he was before me; the stable is directly close to the archway, you turn to the right hand; we went into the stable; I saw in the stable three or four men, whether they were armed I cannot say; there was a light below; I went up a ladder at the further end, on the left hand into the loft, and found the people up stairs, I suppose about twenty-two or twenty-three; somebody asked Thistlewood how many there were, and he said there was no occasion to count them there were five-and-twenty; there was a carpenter's bench there, and on the bench a quantity of swords and pistols; there was only one light that I observed, and that was on the bench; there was one man in a brown great coat, who spoke of the impropriety of going to lord Harrowby's, with so small a number as five-and-twenty men; that was the first time of my hearing lord Harrowby's mentioned as the house to which we were to go; Thistlewood said, that number was quite sufficient, for he only wanted fourteen men to go into the room, and supposing that lord Harrowby had sixteen servants that number would be quite sufficient; the other man said, when we come out, there will of course be a crowd of people about the door, how shall we make our escape? Thistlewood said, you know that the largest party were already gone; Davidson then told him not to throw cold water upon the proceedings, but if he was afraid of his life, he might go away, they could do without him; and Brunt said, sooner than they should go from the business they were about, he would go into the house by himself, and blow them all up, even if he perished with

them; you know we have got that says Brunt, that we can do it with; after that, the man in the brown great coat said, though I do not like to go with so small a number, yet as you are all for it, I will not be against it; he then proposed they should all put themselves under the orders of Mr. Thistlewood. Thistlewood then said, every one who engages with me will have equal honour with myself; and he proposed that the fourteen men who were to go into the room, should volunteer from the persons that were there assembled; about twelve or thirteen men immediately afterwards volunteered, and among them were Tidd, Brunt the prisoner, Davidson and Wilson. About this time, Thistlewood stepped down stairs, and he came up again, and said he had received intelligence that the duke of Wellington and also lord Sidmouth had just arrived at lord Harrowby's; I do not recollect any thing more that passed till the officers came up; they came up into the room, and told them to surrender; that they were officers, and that there was a guard of soldiers below; I was taken into custody up stairs." This, gentlemen, is the evidence of an accomplice; but if it is believed, it supports the case proved by Adams.

Then upon his cross-examination, he says, "I have read Paine's Age of Reason, and I have also read the bishop of Llandaff's answer to it; Paine's certainly affected my mind, but the bishop's answer prevented its whole effect; I never saw Brunt till Thistlewood brought him to me; I went there first without knowing what they were going about; I saw Tidd arm himself; I followed him; I thought they were going to attack the members of the House of Commons; still I went with him, having reason to believe something was to be done, but not knowing what was to be done till I got to Cato-street; when he told me there was to be a cabinet dinner, I was convinced that their object was, to destroy the persons there; but though I was a Christian as I profess to be, I was too much afraid to retreat after I had been engaged in this plan."

Thomas Monument is produced to shew, that that which his brother swears is correct, so far as it is within his knowledge; he states, "I remember Thistlewood coming to my brother's house one evening, in company with Brunt the prisoner; Thistlewood asked to speak to my brother; in consequence of that they both went out; Brunt staid behind in the room; they were out about two or three minutes, and after they returned, Brunt and Thistlewood went away together; and again on the 22nd of February, the Tuesday, Brunt and Tidd called on my brother; when Brunt came in, my brother said, I thought I had lost you; there was something passed concerning the king's death; that his death had made an alteration in the plans; my brother asked him what plans; he said they had different objects in view; I recollect Brunt asking Tidd whether he should give us the outline of a plan; whether

Tidd made any answer or not, I do not know ; but Brunt told us the pass-word ;" and he gives the same account of that as the brother had done before. "On the Wednesday, Brunt called again on my brother between four and five o'clock ; my brother could not go just then ; Brunt asked him if he was ready to go ; we were busy at work, and my brother told him he could not go then ; Brunt told him, when he was ready to go, he was to call in Hole-in-the-wall passage on Tidd, and he would take him ; Brunt then went away ; my brother went out about seven o'clock, as nearly as I can recollect ; I did not go myself ; I had never seen my brother from that time till he was in custody." Now, gentlemen, this young man swears positively to every thing which his brother John has sworn to, except the parts which his brother only was present at ; the question is, whether, when a narrative is made in several parts of which another person agrees, you do not believe the accomplice in the other parts ; the two agreeing in the principal part, you will ask yourselves whether you do not believe him in the other things also.

John Monument is called again ; he says, "I was taken in custody to Whitehall ; I cannot exactly say whether I was handcuffed to any person ; I know I was put into a room by myself, but on the last day of examination some conversation passed between me and Thistlewood ; Brunt and the other prisoners were there ; we were then all put into a room together. Thistlewood told me, when I came to be examined before the Privy council, to tell them that Edwards brought me into the meeting,—that it was through Edwards I came there. I said, how can I tell that falsehood, when I have never seen Edwards. He said, that is of no consequence at all ; you must describe him as a man not much taller than yourself, of a sallow complexion, and that he wore a brown great coat. We were sitting round the table, and Thistlewood told me that Edwards had betrayed us ; and he bade me send that round to the other prisoners. I did not like to do it ; I told him I should be noticed ; he then leaned over, and desired somebody else."

Then, gentlemen, Thomas Hiden is called ; I shall not make any apology for reading the whole of the evidence. I feel that I am trespassing very much on your time, but the occasion is so important, that I am sure you will not feel it to be too long. Thomas Hiden says ; "I have carried on business as a cow-keeper and dairyman in Manchester-mews ; I have now the misfortune to be in prison for debt ; I was taken in execution last Saturday se'nnight. I know Wilson very well. A few days before the 23rd of February he asked me to be of a party to destroy all his majesty's ministers at a cabinet dinner ; that he and the party had all things ready, and were waiting for a cabinet dinner, and that they had such things as I had never seen—large round things, made of tarpaulin and cords, and filled full of nails and

iron and other things, and that their strength was very great ; he said if they were lighted, they would heave up one of the walls of the houses on the other side of the street ; he said they were waiting for a cabinet dinner, and then they meant to set some houses on fire, and, by keeping the town in confusion for some days, it would become general ;" that is not the particular mischief of setting fire to the houses, but that would become general ; "those things were to be put into the room where the gentlemen were at dinner ; that they meant to set fire to lord Harrowby's house. He said that all who escaped the explosion were to die by the edge of the sword or some other weapon. The houses he named were those of the duke of Wellington, lord Harrowby, lord Sidmouth, lord Castlereagh, the bishop of London, and one other house that I do not recollect ; he said that they would depend upon my making one ; I told him I would ; before the 23rd," he does not remember the time, but that time is made up by another witness, "I wrote a letter to lord Castlereagh ; I tried to see him, but I could not get access to him ; I went to watch lord Harrowby's going out of his house to Hyde park ; I went two or three times to lord Harrowby's ; at last I saw a gentleman by his house mount a horse. I did not know the earl of Harrowby then ; I followed him into the park ; I met him, and delivered to him the letter I had written to lord Castlereagh." He looks at the letter, and says, "that is the letter." It cannot be in evidence, because it passed between two persons, the prisoner not being there. "The next day, between four and five o'clock, Wilson met me, and said, you are the man I want to see ; he said there was to be a cabinet dinner that night at lord Harrowby's, in Grosvenor-square. I asked him where they were going to meet ; he told me I was to go up into John-street, and to the public-house at the corner of Cato-street, the sign of the Horse and Groom ; and there I was to stop in the public-house, or to stop at the corner of the post until I was showed into a stable close by. I asked him when they were to meet ; he said a quarter before or at six o'clock ; if you do not make haste, he said the grand thing will be done before you come. I asked him how many men were to meet ; he said between twenty and thirty ; I asked if that was all the party that was in Cato-street, and he said there was another party in Gray's-inn-lane, another party in the Borough, and another in Gee's-court or the city, I do not know which. He told me I had no occasion to be alarmed, all Gee's-court was in it ;—they are most of them Irish in that court. Wilson told me the Irish were all in it, but that they would not begin till the English began first ; the English had behaved so ill, and disappointed them so often, that they were determined not to begin till the English had begun ; he said one party was to go to lord Harrowby's, and do the grand thing, and then all the parties were to retire, and meet some-

where about the neighbourhood of the Mansion-house." That is consistent with what Adams said. "He said there were two pieces of cannon in Gray's-inn-lane, which would be very easily taken by knocking in a small door; four pieces more at some Artillery-ground, he does not know where, which were to be got easily by killing the sentry. I then left him, and went to John-street that evening, between six and seven o'clock. I believe it to have been near seven when I got there. When I got near the gate-way I met Wilson and Davidson, the man of colour, standing near the post. Wilson said, you are come; I said, yes, I am come, but I am behind my time; I told him I had to fetch some cream, which I was obligated to do. Davidson asked me if I was going in, and said, Thistlewood was in; I asked him what time they would go away from thence, as I must go and get some cream; and he told me they meant to leave that place about eight o'clock, and if they were gone before I came back, I must follow them to Grosvenor-square, and I should find them at lord Harrowby's house," describing the place where it was.

He is cross-examined; and he says, "I went to a club, called the shoemakers' club, twice; I went first on a Sunday night; I was induced by a friend of mine to go; I went another time on a Sunday, but I never went once to a private meeting; I know Bennett; I asked him if he would go with me and my friend Clarke, who was the person who invited me to go. I never persuaded him to go; I asked him if he would go to the shoemakers' club with Clarke and me; I did not know till between four and five, that the meeting was to be held in Cato-street. I wrote the letter myself."

Then the earl of Harrowby is called; he is a privy councillor, and one of his majesty's ministers; he says, "it was usual to have cabinet dinners, but the dinners were suspended in consequence of the king's death. I determined to have a cabinet dinner on the 23rd of February last; on the Friday or Saturday preceding, cards of invitation were issued for that purpose. I saw the last witness Hiden in the park, near Grosvenor-gate, on Tuesday the 22nd of February." His lordship is not quite positive, but thinks it was between two and three o'clock he saw him; he gave his lordship a letter, and upon the letter being shown to him, he said; "that is the letter" his lordship then says, "I had some conversation with Hiden; I asked him if he had given his name and address in the letter; I desired to have his name and address, and he gave it me; on his expressing a wish to have some further communication with me, I saw him again by appointment the next morning in the ring in Hyde-park; I appointed to meet him, as he seemed to be afraid of continuing the conversation with me; I went to Hyde-park, and met him at Grosvenor-gate; I told him to go on to the ring, and I went on among the plantations in order to avoid his being seen. The dinner

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did not take place; but I had given directions to the servants to provide it as if it was to take place; a little before eight I was dining at the earl of Liverpool's, and I sent a note to inform my principal servant that the dinner would not take place, and the dinner was of course put aside."

John Baker, his lordship's principal servant, says, at a little after eight o'clock, he received information, that his lordship and the privy council would not dine there; he says, "up to that period every preparation for the dinner was going on; nobody had an idea to the contrary; I believe there was a party that night at the archbishop of York's, whose house is next door; as I saw carriages stopping at the door, I thought there was to be a dinner there that day, and that some gentlemen had come there; it was rather sooner than lord Harrowby's dinner hour; it was between six and seven o'clock."

Richard Munday says, he lives at No. 3, in Cato-street. He says, "I know the stable in Cato-street; on the 23rd of February last I saw persons go into that stable; the first was about three o'clock in the afternoon; I saw Harrison in the stable. I came home from work about twenty minutes or half an hour after four, and I saw Davidson walking up and down the archway that leads to the stable; I went into my house, and I saw Davidson again about six o'clock, with two lighted candles in his hand." It is said that one candle was in the stable and another up stairs; it is very probable that they had but two candles; however that is of little consequence. "I saw two going in and three coming out, and moving backwards and forwards;" that does not appear to be very material, for there is no doubt that they were there, and he saw them hovering about and going in and out.

Then George Caylock says, he saw Harrison go into the stable; Harrison told him that he had taken two chambers and was cleaning them; he saw five-and-twenty people go into the stable that evening.

Then George Thomas Joseph Ruthven is called; he gives you a description of what passed in Cato-street. I do not know that it is necessary for me to trouble you with an account of the transactions there; he found them in the place; he and Ellis went up first; the other poor man, Smithers, full of courage, pushed himself forwards and was killed by Thistlewood. With respect to the arms and ammunition, I will state to you presently of what they consist. A very serious remark, no doubt, arises on the circumstance of their being all found there and the outrageous resistance which was made—the bloody resistance which was made, and which was attempted to be made a great deal more bloody than it turned out—whether that is evidence of a purpose beyond the destruction of ministers (the mere conception of which is not a capital crime, though a very great offence in a moral point of view) you will consider.

4 Q

Then James Ellis says, that the moment that he saw Smithers stabbed, he fired his pistol; the pistol did not take effect, but missed the man, the candles were then extinguished; the flash of his pistol was the last light that he saw. Ruthven says there were several candles. Adams says there were only two; and when you consider that the only fire he saw after that, was the flash of his pistol, it should seem that there were not many candles in the room; however, as to that contradiction between Ruthven and Adams, it is of little consequence. Ruthven said there were four or five on the bench, and two or three in the little room. It appears that there was great confusion; and, perhaps, that may account for a good deal of inaccuracy. Ellis says there were two or three; one says there were certain words spoken from below; and another says there were other words to the same purport. You will see, whether that is such a contradiction as affects, in your minds, the credit to which the other parts of the case may entitle Adams.

Westcoatt, Wright, and Champion, who are also officers, are called to prove facts of the same nature.

Then Lieutenant Fitzclarence gave his evidence in the way in which you saw and heard; his conduct, and that of his men, was most gallant; he states what they found on these persons.

Samuel Hercules Taunton is then called; he states that he went to Brunt's lodgings the following morning, and found those things which he produces.

Then Ruthven is called again, and he enumerates the things, and states where they were found; if it is necessary that I should read them to you, I will do it with great pleasure; but the great object is, to show that there was an assembly of these men armed with a great number of arms, and that they made a most bloody and outrageous resistance. You must, of course, draw your own inferences from the nature of that resistance, as it can be applied to the case of high treason.

The quantity of things found seems to be a considerable ingredient in the evidence. You see the defence is this; we intended to assassinate the ministers, and to commit plunder afterwards. With respect to the plunder, there is no evidence of that; with respect to the killing his majesty's ministers, the prisoner, as well as his counsel, admits the intention, and the evidence proves it; in the loft they found thirty-eight ball-cartridges, a fire-lock and bayonet, one powder-flask, three pistols, one sword, six bayonet spikes and cloth belt, one blunderbuss, one pistol, fourteen bayonet spikes, and three pointed files, one bayonet, another bayonet spike and one sword scabbard, one carbine and bayonet, two swords, one bullet, ten hand-grenades, two fire-balls, one large grenade and bayonet, one rope ladder, one sword-stick, forty ball-cartridges, one bayonet, and three loose balls. They found, in the

stable, in the pocket of Bradburn, six ball-cartridges, three balls, and some string put round him to act as a belt; the pistol that Tidd fired, the pistol that Wilson attempted to fire; a blunderbuss, sword, belt, and scabbard in the stable, a pistol in the stable, another pistol in the stable, a sword in the stable, twelve large sticks with ferrules; in the pocket of Tidd they found two ball-cartridges, and round him a leather belt; two ball-cartridges facing the stable, and ten ditto in Newnham-street; one musket out down, and one sword from Davidson; one haversack, cross-belts, one pricker, bayonet, scabbard, cartouch-box, and a belt round the body of Davidson; two haversacks, one belt, and 'tin powder-case, from Ings; four pistol balls, one pistol key, and a knife-case from Ings; one haversack, containing seventeen ball-cartridges, three balls, one pistol flint, one pricker; one worm for drawing cartridges, one knife, and a turn-screw; one stick cut to receive a bayonet, left in the public-house; these were found in the stable and the loft above, except the stick left at the public house.

I will now read, gentlemen, what was found in Brunt's house:—"In a rush basket, nine papers, with rope-yarn, tar and other ingredients; some steel filings in a paper, about half an ounce." The serjeant told us the use of the filings which I did not know before. "In another rush basket were found four grenades, three papers of rope-yarn, tar and other ingredients; two bags of powder, one pound weight each; five flannel bags, empty, one paper of powder, one leathern bag containing sixty-three balls, one iron pot, one pike handle." These were left at that house; they were not wanted, certainly, for the assassination of the king's ministers, because they were not with them. Then, at Tidd's, which you know has been described as the *dépôt*, they found, "in a haversack, 434 balls, 171 ball-cartridges, 69 ball-cartridges without powder; there were three pounds of powder in paper; also, in a coarse canvas cloth, ten grenades, eleven bags of powder, one pound each, ten empty bags, into which powder might have been put, a small bag, with tin powder-flask with some powder, sixty-eight balls, four flints, twenty-seven pike-handles; also a box, containing 965 ball-cartridges."

Serjeant Hanson is then called; he opens one of those hand-grenades for your inspection, and you see, from the inspection of it, its nature and the terrible consequence which might arise from such an instrument as that. He says, that the flannel bags, with the powder in them, are in imitation of cartridges for a six-pounder, so that something was in view, as it may be supposed, besides the assassination: cannon were hardly to be expected to be taken to lord Harrowby's dinner-room. The witness states, "I examined them; they contain exactly a pound of very good powder; we do not use flannel, but serge, in the army; but this would answer the purpose perfectly. I

have examined the fire-balls; there is a difference in some of them, but they are generally composed of oakum, tar, and resin, and generally brimstone; but I found one without brimstone; the steel filings would be part of the composition of the priming of the fuse, the fire-balls would set any wood on fire, and would burn three or four minutes, according to their size; if thrown into barracks, with hay and straw, they certainly would occasion a conflagration. He says, the grenades in the army are covered with iron; these grenades do not seem as if they had been made by a military man; but they would effect a great deal of mischief." Then, he says, "the more hard they are bound, the greater will be the explosion." Then he took the fuse out of one of the hand-grenades, and poured the powder out; he says, "those he weighed contained three ounces and a half of powder, and this appeared to be the same; that quantity was more than would be sufficient for a nine-inch shell, and quite sufficient to explode the grenade in which it was. In this grenade there were 26 pieces of iron; they would fly round the room like so many shot, and were quite sufficient to destroy or maim fifteen persons in a room; they explode within half a minute after their being a-light."

Gentlemen, this is the evidence for the prosecution: for the prisoners, you heard the two eloquent speeches of the learned counsel; you have heard also the prisoner state his own case. I am sure you paid all the attention which was due to it, and perhaps it did not make the impression upon you which you wished the prisoner's speech to make upon your minds; but you are to deal with it, gentlemen, as you feel to be proper; you heard it, and will consider it. There is no evidence offered for the prisoner; the case lies entirely upon the evidence for the Crown, and the arguments on both sides, which arguments you had the goodness to attend to, and I am sure they made the impression upon you which they ought. With respect to comment, I see very little to trouble you with; indeed, hardly a word. As I said before, there is here proved and admitted a conspiracy to do a most nefarious act: it is broadly stated to us, that the object of the prisoner and his associates were to destroy fifteen of the king's ministers as they sat at dinner, in the unsuspecting hour of cheerfulness, by a degree of violence, and in the prosecution of a plan which one cannot think of without shuddering; that is admitted. Is that all the purpose? If that is all the purpose of these men, the prisoner is not guilty of high treason; but you are to ask yourselves, gentlemen, whether that could be the sole purpose: why are the fifteen principal ministers of the king to be destroyed in this way? If you attend to the evidence of Adams, and many of the others, there is no question at all that there was an ulterior plan and intention, and that ulterior plan and intention proves directly, if you believe the evidence, the trea-

son charged against the prisoner at the bar. It is stated, that it was an absurd project; so absurd, that it is not only improbable, but impossible, that it should be ascribed to any reasonable being: it has been said, very truly, that the attempt or the project to destroy the king's ministers is such, that one knows not how to deal with the supposition of it, but it is proved—it is true; the prisoner has stated it, and his counsel are obliged, by the force of evidence, to admit it. But then they contend, that they entertained no other project: you will judge whether that is the case. The question is, not whether these people were likely to succeed in their atrocious plans, but whether they entered into them? Did they compass, or imagine or intend those crimes with which the indictment charges the prisoner at the bar?

Does the evidence prove it? if not, there is no question, gentlemen, how the verdict ought to be given. If with all the great attention with which I have observed you consider the evidence and the addresses of the prisoner's counsel and the prisoner himself—if, I say, you have a reasonable doubt upon the subject, you ought, as in all criminal trials, to give the prisoner the benefit of that doubt; but if, giving your attention gravely to this important subject, you are satisfied that the charge is proved, I need not tell you, gentlemen, that it is your duty to find him guilty. You will now consider, and give your verdict. I am sure you will give it according to the best of your judgment, and according to the necessary inference to be drawn from the evidence you have heard.

A Jurymen (Mr. Goodchild).—My lord, I have a doubt in my mind on a point of law. I conceive, as a juror, I am bound to receive the law from your lordship. Your lordship has called our particular attention to the first and third counts; I am sure your lordship has most conscientiously done it; but at the same time, I wish to ask the opinion of your lordship, whether should the evidence bear the construction, that an actual arming had taken place, that a resistance has been made to the civil authority, that in law constitutes a levying of war?

Lord Chief Baron.—I wish clearly to understand you; have the goodness to state the question again.

Mr. Goodchild.—Whether, if the evidence should bear out the opinion that an actual arming had taken place, and that a resistance had been made to the civil authority, that actual arming, and that resistance, constitute the crime of levying war?

Lord Chief Baron.—Not resistance merely to the civil power, unless you are of opinion it is an arming with the view stated in the indictment.

Mr. Goodchild.—The question is intended to include that, it being an arming with a view to oblige his majesty to change his measures by force of arms.

Lord Chief Baron.—That is a conspiring to levy war.

Mr. Goodchild.—I do not, my lord, ask whether that is a conspiring to levy war, but whether that becomes a levying of war under the fourth count.

Lord Chief Baron.—I thought it best to submit to your consideration the first and third counts, because I think there is less difficulty upon those subjects than any others; the first and third counts, beyond all question, charge high treason under the act of his late majesty.

Mr. Goodchild.—At the same time I should feel it my duty, as a juror, to give a verdict on the whole indictment if I may ask your lordship's opinion upon the law.

Lord Chief Baron.—I shall be very happy to give you any assistance in my power; if there is, in your opinion, evidence of a levying of war, it will be under that count; do I make myself understood?

Mr. Goodchild.—Perfectly, my lord.

[The jury retired at twenty minutes before four, and returned into court in twenty minutes, with a verdict, finding the prisoner Guilty on the third and fourth counts.]

Mr. Attorney General.—My lord, I yesterday* called the attention of the Court to a publication of the trial of Arthur Thistlewood in a Sunday newspaper, called *The Observer*, in violation of the order which had been made by the Court previously to that trial. I was not then in a situation to bring this matter formally before your lordship, not having been furnished with the documents necessary to bring the matter in such a shape before the Court as that they might be enabled to deal with it. I have now an affidavit, stating the purchase of one of the *Observer* newspapers, at the shop of the proprietor, Mr. Clement, in the county of Middlesex, on Monday the 24th of April. I am also furnished with a certificate from the Stamp-office, accompanying a copy of the original affidavit filed at that office by Mr. Clement, in which he states that he is the publisher and sole proprietor of that paper. I apprehend, therefore, that your lordships have evidence now before you, not only that Mr. Clement is the proprietor and publisher of the paper in question, but that he actually sold this paper; and (if it were necessary) that he sold it with a full knowledge of the injunction of the Court, for I have only to call your lordship's attention to a passage in the newspaper itself, to satisfy you that he has done it with a full knowledge of the order made previously to the trial, for he states, that after the jury were sworn, the lord chief justice then present thus delivered himself:—"As there are several persons charged with the offence of high treason by this indictment, whose trials are

likely to be taken one after the other, I think it is necessary, in furtherance of justice, strictly to prohibit the publication of the proceedings of this or any other day until the whole of the trials shall be brought to a conclusion; it is highly necessary to the purposes of justice that the public mind, or the jurymen who are hereafter to serve, should not be influenced by the publication of any of the proceedings which may take place until the whole of those proceedings shall be finished; it is expected that all persons therefore will attend to this admonition."

I deem this to be a most flagrant, wilful, and daring violation of the order of the Court; and considering the benevolent motive which actuated the minds of your lordships upon that occasion, I think it would be unbecoming in me, having this fact brought to my notice, not to bring it under the consideration of the Court, that they may deal with this person as they in their wisdom shall think fit. I shall therefore move that these affidavits be received, and that your lordships may proceed to punish this person for his contempt in such manner as the Court may think proper.

Lord Chief Baron.—Let the affidavits be read.

The affidavit of George Holditch, of Yeat's-court, Carey-street, newsman, and Elijah Litchfield, of Lincoln's-inn, gentleman, was read; George Holditch stating, that he had on the 24th instant purchased the newspaper in question, at the shop of William Innell Clement, No. 169, Strand, from a person acting as servant in the shop, and that he paid one shilling for the same; and Elijah Litchfield stating, that he saw the person whose name is subscribed to the certificate annexed sign the same.

The certificate annexed was read, containing a copy of the affidavit of William Innell Clement (sworn at the Stamp office on the 22nd of January 1816) that he was the printer, publisher, and sole proprietor of a certain newspaper; that the printed newspaper was proposed to be printed at his office at his dwelling-house, No 169, in the Strand, and that it was intitled *The Observer*.

Mr. Justice Richardson.—Mr. Attorney General, have you looked at the act of parliament to see that the copy of the affidavit, so certified, is evidence in *all* cases?

Mr. Attorney General.—I apprehend so my lord; the 9th section of the 38th Geo. 3rd cap. 78 directs that the affidavit shall be filed, and certified copies shall in all proceedings, civil and criminal, touching any newspaper and so on, be received and admitted as conclusive evidence; we add to that evidence the actual sale of the paper at the shop of the person against whom I apply.

Mr. Justice Richardson.—Do you make any distinct motion?

* See the commencement of the present trial.

Mr. Attorney General.—That he may be punished for his contempt in such way as the Court may think right.

Mr. Justice Richardson.—It will be proper to direct the attendance of the party, that we may see whether he has any excuse to offer.

Mr. Attorney General.—I will apply in the first instance for a rule to shew cause, if your lordship pleases.

Lord Chief Baron.—This is undoubtedly a very grave accusation; the order was certainly

made after great consideration by the Court: with a view to prevent mischief and injustice; nothing can be more prejudicial to justice than to publish proceedings of this description in the course of an inquiry. The person must be ordered to attend here on Friday morning, at the sitting of the court. *

* See the further proceedings upon this subject on Friday April the 28th at the conclusion of the trial of William Davidson, and Richard Tidd, *infra*.

705. The whole Proceedings on the Trial of WILLIAM DAVIDSON and RICHARD TIDD, for High Treason, before the Court holden under a Special Commission, for the Trial of certain Offences therein mentioned, on the 26th and 27th days of April: 1 GEO. IV. A. D. 1820.*

SESSIONS HOUSE, OLD BAILEY,
WEDNESDAY, APRIL 26th, 1820.

Present

The Hon. Mr. Baron Garrow.

The Hon. Mr. Justice Best.

The Common Sergeant,

And others, his Majesty's Justices, &c.

Mr. Baron Garrow.—Gentlemen of the Jury, it may perhaps have surprised you that, as we are sitting and you are in Court, we should not have proceeded to business. The Court are so anxious to show that we attend with the greatest solicitude to your convenience, that I think it proper to state, that the pause is at the solicitation of the learned counsel for the prisoner. I am sure that you will feel it proper, that we should wait a few moments to give effect to that solicitation.

Mr. Curwood.—My lord, the prisoner Davidson, has no objection to uniting in his challenges with the prisoner Tidd, whose trial the Attorney-general had proposed to take next.

Mr. Baron Garrow.—Gentlemen, I have now to communicate that to you to which it would have been improper to advert before. The learned counsel for the prisoners (whose exertions have been witnessed more than once) have thought it necessary to communicate with them, whether it would be necessary to pursue the course of severing their challenges, or whether two of them would take their trial by the same jury. We have in effect gained time by the pause, for he has communicated to me, that the two next prisoners are content not to sever their challenges, but to be tried together.

* See the preceding trials of Thistlewood, Ings, and Brunt.

[Richard Tidd and William Davidson were set to the Bar.]

The Jury Panel was called over, commencing with No. 145.

Edward Cherill, stonemason, challenged by the prisoner.

John Mayne, gentleman, challenged by the prisoner.

David Pain, esquire, challenged by the prisoner.

Richard Tucker, cheesemonger, challenged by the prisoner.

Thomas Beachamp, farmer, challenged by the prisoner.

Robert Ceeley, rigger, challenged by the prisoner.

Thomas Fagg, esquire and coach-master, challenged by the Crown.

Matthew Belcher, vintner, excused on account of illness.

Benjamin Watson, gentleman, challenged by the prisoner.

George Burrows, silversmith challenged by the prisoner.

Edward Ellis, gentleman and stock-broker, challenged by the prisoner.

Benjamin Blyth, organ-builder, challenged by the prisoner.

William Clare, feather-dresser, challenged by the prisoner.

John Jackson, glass-cutter, challenged by the prisoner.

John Beck, gentleman and seedsman, challenged by the prisoner.

Felix Booth, esquire and distiller, challenged by the prisoner.

Charles Benham, market-gardener, challenged by the Crown.

Samuel Littlepage, baker, excused on account of illness.

Thomas Hobbs, silversmith, challenged by the Crown.

Francis Dorill, esq., challenged by the prisoner.

William Percy, plasterer, sworn.

John George Holmden, fuse-cutter, sworn.

Archibald Ritchey, stone-mason, challenged by the Crown.

John King, gentleman, sworn.

Charles Elton Prescott, esquire, sworn.

Benjamin Rogers, farmer, sworn.

Richard Laycock, esquire and cow-keeper, challenged by the prisoner.

George Fox, sawyer, challenged by the Crown.

William Acock, plumber, challenged by the Crown.

Edward Cuel, carpenter, challenged by the Crown.

George Golding, surveyor, sworn.

Robert Roberts, oilman, challenged by the Crown.

William Bound, founder, challenged by the Crown.

Charles Page, esquire and merchant, sworn.

William Cole, farmer, challenged by the prisoner.

John Lewis, watch-maker, challenged by the Crown.

Edward Flower, esquire and schoolmaster, challenged by the prisoner.

John Balm, gentleman and tallow-chandler, challenged by the Crown.

John Young, gentleman and scale-maker, sworn.

Stafford Price, gentleman and currier, challenged by the prisoner.

James Cary, joiner, challenged by the prisoner.

William Edgecombe, joiner, challenged by the prisoner.

Richard Emery, cooper, challenged by the Crown.

Stephen Gaurd, bricklayer, challenged by the Crown.

Thomas Brayne, mason, challenged by the Crown.

William Butler, baker, sworn.

William Benn, farmer, challenged by the Crown.

John Roper, gentleman, challenged by the Crown.

William Norton, sawyer, challenged by the prisoner.

William Blason, gentleman, challenged by the Crown.

Thomas Lester, bookseller, challenged by the Crown.

Mr. Lester.—My lord, as this is the third time that I have been challenged, * may I request to be dismissed.

Mr. Baron Garrow.—I can only assure you, in the language of the lord chief baron, that though the objection has obtained the name of challenging the juror, it ought not to be considered as giving any offence to him. Par-

* He had been challenged in the previous cases of Arthur Thistlewood, and John Thomas Brunt.

ticular reasons may occasion an objection to a particular individual, but I cannot take it for granted that on a future trial you might not be called upon to serve with a ready assent on both sides, therefore I cannot dispense with your attendance on this occasion; I wish I could.

Mr. Attorney-General.—There are several gentlemen sworn on the present jury, who have been challenged on one side or the other, on preceding trials.

Mr. Baron Garrow.—From circumstances of a private nature I have not been able to attend in the early part of the proceedings here, but that which I stated as the result of practical experience is exemplified on the present occasion; for gentlemen who have been challenged on former trials, are sworn to try the prisoners now at the bar: if they arose out of any supposed incapacity or party principle, those objections would continue; further information may induce those, protecting the interests of the public, or of the accused, to do in other instances that which they appear to have done in several instances already.

Joseph Sheffield, esquire and ironmonger, sworn.

Joseph Haynes, bricklayer, challenged by the Crown.

Robert Stephenson, anchorsmith, challenged by the Crown.

Richard Bant, gentleman, challenged by the prisoner.

Isaac Giam, baker, challenged by the Crown.

William Churchill, gentleman and wine merchant, sworn.

Thomas Wilkinson, farmer, challenged by the prisoner.

Samuel Fish, tobacconist, challenged by the prisoner.

Edmund Collingridge, water-gilder, challenged by the Crown.

William Shore, farmer, challenged by the Crown.

Josiah Bartholomew, watchmaker, challenged by the prisoner.

John Jones, carpenter, challenged by the Crown.

Thomas Bristow, coachmaker, challenged by the prisoner.

Samuel Granger, lighterman, sworn.

THE JURY.

William Percy,	Charles Page,
John George Holmden,	John Young,
John King,	William Butler,
Charles Elton Prescott,	Joseph Sheffield,
Benjamin Rogers,	William Churchill,
George Golding.	Samuel Granger.

Mr. Shelton.—One of the Jurymen is sworn by the name of Golding; I am told his name is Goldring.

Mr. Curwood.—We have no objection to him.

Mr. Gurney.—Nor the Crown.

Mr. Shelton.—Then I may proceed.

Mr. Gurney.—Yes.

The Jury were charged with the prisoner in the usual form.

THE Indictment was opened by Mr. Bolland.

Davidson.—Will your lordship be pleased to grant us a seat?

Mr. Baron Garrow.—Yes, certainly.

Mr. Gurney.—Gentlemen of the Jury;—It is my duty to lay before you, very shortly, a statement of the circumstances which will be adduced in evidence on the part of the Crown, in support of this indictment. You will have observed that the charge which is made by it against the two prisoners now at the bar, William Davidson and Richard Tidd, is not of any private nature; it does not impute to them any acts affecting the interests of private individuals, but it accuses them of the highest crime known to the law, of that which strikes at the existence of the government, and aims at its entire subversion—to substitute, in its place, some provisional government, whose pledges for good government were to be slaughter and conflagration.

It will not be necessary for me to state to you the indictment more particularly than that in the first count it charges a compassing and imagining (that is an intent) to depose the king, and in another a compassing to levy war against the king, in order to compel him to change his measures. The evidence which we shall lay before you will most completely substantiate both of those charges.

The law has wisely made the intention to commit these crimes high treason, so as that intention be manifested by overt (or open) acts; the acts done in furtherance of this intention are charged in the indictment, and will be proved by the witnesses.

The indictment comprehends several persons, Arthur Thistlewood, James Ings, and John Thomas Brunt (whose trials have taken place), the two prisoners at the bar, Davidson and Tidd, upon whose fate you are to pronounce (and six other persons) of the names of Wilson, Harrison, Bradburn, Strange, Gilchrist and Cooper, all of whom, and many others will necessarily be introduced to you in the course of this inquiry.

Of these persons the first, named Arthur Thistlewood, was undoubtedly the leader; he had sustained the rank of a gentleman; and it is a striking feature in this case, that a person in that rank should be found associated as he has been with the other persons named in the indictment, most, if not all, of whom are working mechanics.

When this plan was first conceived, it may not be in our power to demonstrate; but you will find, that so far back as the month of January, it had arrived at considerable maturity; that the plan (which was afterwards acted upon) had then been formed to assassinate his majesty's ministers at a cabinet

dinner; and it was then hoped, when all the persons intrusted by his majesty with the direction of public affairs should have been cut off at one blow, that by following that up by conflagrations in different parts of the metropolis, and by armed men acting in various directions, the reins of government might be seized by these conspirators and the government itself overthrown.

To perfect this plan, and enlist into its execution as many persons as possible, meetings were held in various places: we shall not have occasion to follow those meetings into different parts of the town but we shall confine our evidence principally to meetings which took place first in a back room at a public-house called the White Hart, and were afterwards removed, for greater security to a two-pair of stairs back room in a house in which the prisoner Brunt (who has been tried) actually lodged in Fox-court, Gray's-inn-lane. It was contrived, that Ings should take the lodging; that he should profess an intention to bring his furniture in; but no furniture was ever brought in: the key of the room was kept by Brunt; and in this room sometimes once a-day and sometimes twice a-day, the meetings of these conspirators were held, for the purpose of maturing the plan that had been conceived, and of devising all the means of its execution.

The death of his late majesty (which took place on the 29th of January) for some time disconcerted their plan of operations. Until after his late majesty's funeral, of course cabinet dinners were suspended; the conspirators became impatient of the delay which occurred, and that impatience gave birth to other projects for carrying the same object into effect. At one time it was proposed to divide their force into several parties, to attack the ministers separately at their respective houses; and it was thought that by this means, though it was not likely all should take effect, they might be able to take off four or five whom they particularly marked for destruction; at another time, another project was entertained, to break out on the night of his late majesty's funeral, at which time the cabinet ministers would necessarily be at Windsor, and the guards would be at Windsor; when, therefore, there would be neither the head to direct, nor the arm to execute the resistance to the measures which they projected; and it was thought, in the absence of all those means of resistance, they might carry their plan into execution. This, however, was on consideration abandoned, and they looked forward with eagerness to the next cabinet dinner that should take place, which by bringing all his majesty's ministers into one house, and into one room, would give them the means, at one blow of effecting their destruction.

These cabinet dinners take place during the sitting of Parliament, at the houses of the members of the cabinet alternately, usually I believe, on a Wednesday; but though no notice had

been given of any dinner, they were certainly looking forward to that Wednesday to which you will particularly direct your attention (the 23rd of February) for the accomplishment of their purpose; and, as the time drew near, every exertion was made to complete their preparations; pikes were provided and pike-handles, composed of rough sticks cut from trees seven or eight feet long, ferruled at the end, with holes bored for the admission of pike-heads; pike-heads were procured, some old bayonets, others old files filed to a point to operate as a bayonet or pike-head; pistols, blunderbusses, swords, hand-grenades and fire-balls. The hand-grenades which were constructed were not such as are made by military men, but, for the purposes of destruction, perhaps scarcely less effective; about three ounces and a half of gunpowder put into a tin case or chamber rather smaller than this, which I hold in my hand [*holding up to the jury an ink-stand*], a tin fuse brazed into it, containing a powder prepared for priming, which communicated with the gunpowder in the tin case or chamber, then stocking or cloth cemented round the tin case; a number of nails or other pieces of iron inserted round that; then more cloth cemented; and the whole bound round very tight by tarred string, so as closely and completely to compress it; and, as you very well know, it requires no military skill to be aware that if fire be communicated to the fuse, and so to the powder in the chamber, that would explode, and those pieces of iron would be scattered round like so many bullets. The greatest destruction would be thereby effected. It was proposed that these hand-grenades should be one means of the destruction of his majesty's ministers, by being thrown into the room where they were assembled; but many more were constructed than were requisite or could be used for that purpose, these were intended to effect the other and ulterior objects of their guilty plan.

Besides these, there were fire-balls, composed of pitch, tar, oakum, brimstone, and resin, which had been all made up into balls to be set on fire; these thrown into the windows of buildings would infallibly set those buildings on fire; a considerable number of these were provided. Besides these there was a large number of cartridges for muskets and pistols, and not a few cartridges for cannon. Many of these instruments were prepared at Fox-court, many in other places, and the principal dépôt for them was in the house of the prisoner Tidd; and you will find, that though Arthur Thistlewood was looked up to by these conspirators as their leader, the two prisoners, Tidd and Davidson, were not inconsiderable or inactive coadjutors, that they entered into the conspiracy heartily and zealously, that they forwarded it to the utmost of their power, and that they were amongst the most eager for its complete and perfect execution.

On the Sunday preceding the Wednesday which I have mentioned, these conspirators

held a larger meeting than usual to concert their measures: they met again on the Monday; they met again on the Tuesday, on which morning they received intelligence that a newspaper announced a cabinet dinner for the next day at the earl of Harrowby's, in Grosvenor-square. The news was at first doubted; but the newspaper being sent for, it was found correct. This excited the greatest degree of exultation, expressed by some in the most savage and ferocious terms, by another in terms of shocking impiety; but it was received by all as good news that now all their enemies were to be brought together within one room, all within the means of destruction; and they lost no time in proceeding to consider and to develop all the means by which they should effect their guilty purpose. Thistlewood detailed those means to the meeting in a manner which showed that they had been all well considered; the detail was received with acquiescence and approbation, and a determination that the plan should be carried into execution. The course of proceeding which Thistlewood proposed was this: That they should proceed in a body to the house of the earl of Harrowby; that Thistlewood should knock at the door, and offer to the porter a letter; that the body should instantly rush into the house; that two, armed with swords pistols and hand-grenades, should guard the staircase which led to the upper part of the house; that two others, similarly armed, should guard the staircase leading to the lower part of the house; and that two others, with the same weapons, should be left to guard the area; and that then fourteen should enter the noble earl's dining-room, armed with swords, pistols and hand-grenades, and should massacre every one they found there. They were then to go to other places, where other parties were to act—for other parties were to be assembled in different parts of London; one to set fire to the barracks in King-street, by throwing one of those fire-balls into the hay-loft, which had a window looking into a mews; others to proceed to Gray's-inn-lane, to seize two pieces of artillery that were there; others to proceed to the Artillery-ground, to seize four pieces of artillery which were there; to march from thence to the Mansion-house, to plant the cannon so as to batter it, in case those within should refuse to surrender; to take possession of the Mansion-house, to establish therein a provisional government; then to take the Bank, and to give it up to pillage.

This most atrocious plan, as I before said, was approved of, and they all resolved to act upon it; and every degree of necessary activity seemed to be infused into every mind, to be ready for the perpetration of the crime. They parted, to enable Thistlewood and some others to visit some meetings in another part of the town (one known by the name of the Mary-labone Union) and it was settled they should meet there the next day. The next day they did meet there; all things seemed ready.

Thistlewood was pleased to find them so forward in their preparations; the pistols were flinted, pikes were got ready, sent off to their associates in other parts of the town, and the men who were there armed and accoutred themselves, and in different parties proceeded from Fox-court. It had been thought that that room was not a fit place of rendezvous from which to issue forth to the accomplishment of their purpose in Grosvenor-square, and another place had been selected and engaged by them, which seems to have been admirably adapted for their purpose: it was so on account of its proximity to Grosvenor-square; it was so also on account of the obscurity of its situation, which was not likely to attract public observation: it was a stable and cart-house with a loft and two rooms over them, in a very obscure street called Cato-street, one end of which comes into John-street, in the Edgware-road, but enters only by a gateway, which looks like the gateway of the yard of a public-house; the other end is almost equally obscure. Just as you enter this street from John-street, and turn to the right, you will come to the stable in question. This had been vacant for some time, and it was taken for this purpose.

Some of the conspirators began to assemble early in the afternoon; weapons were carried there in the course of the afternoon, and then, for the purpose of excluding observation, a cloth was nailed against the window, in order that those who lived opposite might not see what should pass therein. They were within a little more than ten minutes walk of Grosvenor-square; they would have to go down the Edgware-road and Park-lane, and would arrive there almost immediately; and it was thought (and certainly not without reason) that they had chosen a convenient place of rendezvous, and that they were not likely to be discovered.

In this loft and in this stable there were assembled, in the course of the evening, all the persons named in this indictment, and as many more as amounted to about five-and-twenty, all armed for the purpose. To guard against surprise, they placed sentries in the stable; one of those sentries was the prisoner Davidson; he was armed with a sword and a carbine. At first some little apprehension was betrayed that their force was insufficient, and some alarm was excited on account of the non-attendance of the prisoner Tidd, who was looked up to as a person of importance in the execution of the plan. Their alarm was however removed by the appearance of Tidd. The time approached for the accomplishment of their purpose, and Thistlewood had just called out the fourteen who were to enter the dining-room at the earl of Harrowby's, when they were surprised by the officers of Bow-street, followed by a party of the guards, who had been ordered to attend them. When the officers entered the stable, they found Davidson and Ings, the two sentries. The officers who were foremost, leaving them to be secured by

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their followers, ascended by a ladder into the loft, and they found there above twenty persons, with that magazine of arms which will be exhibited to you. They announced that they were officers, and called upon them to surrender; instead of surrendering, the persons there, conscious of the nefarious purpose for which they were assembled, desperate from the knowledge that they had forfeited their lives by what they had already done, made a most determined resistance, and Thistlewood their leader stabbed one of the officers, Smithers, who fell on the floor a lifeless corpse! The lights were extinguished; the cry was "to kill the officers;" in the confusion the officers were pushed down the ladder; they were followed by several of the persons there, some of whom entirely escaped, but those who are included in this indictment (with the exception of Thistlewood and Brunt) were taken. These desperate men were not content with taking the life of Smithers, but Thistlewood fired at another officer and made a cut at him with his sword. The prisoner Davidson was pursued; he resisted; with his sword he cut at one, and he fired his carbine at another. Ings, another of the prisoners who has been tried, fired at another officer, and expressed a savage regret that he had not killed him. The prisoner Tidd resisted to the utmost of his power; he fired a pistol at lieutenant Fitzclarence, and was taken only by the superior force of those with whom he was in conflict.

I have before stated that Thistlewood escaped; he was apprehended the next morning, not at his own residence, but at another part of the town, where he had taken refuge. Brunt also escaped; he was taken the next morning. The other prisoners were apprehended either in the loft in the stable, or in escaping from the stable. In that loft were found guns, bayonets, pikes, hand-grenades, fire-balls and cartridges. This was the magazine intended for that party which was to execute the first and most important part of their guilty project—the assassination of his majesty's ministers.

Gentlemen, this is the conspiracy which is charged upon the prisoners,—this is the high treason which is imputed to them by this indictment. It will be proved to you by evidence which you cannot doubt.

To give you those details which can be given by no other persons, it will be necessary to call before you accomplices in their crime. Traitorous conspirators do not sound a trumpet in the market-place to invite honest men to their councils; they admit none to their councils but those who partake in their guilty plans. For what passed, therefore, in their private councils, we must resort to the evidence of accomplices. A great and signal benefit to the community arises from that circumstance, in the prevention of very many crimes; it sows the seeds of distrust among men who meditate those crimes which cannot be committed by a single hand, but require the co-operation of

numbers; each man feels and fears that he who shares his councils may at some future day be a witness to bring him to justice. This consideration deters many from the commission of offences; but if accomplices could not be received as witnesses in a court of justice, offenders would be emboldened by the certainty that the arm of justice would be too short to reach and too weak to punish them. We do not however on the part of the Crown present to you accomplices as witnesses who are to be received without jealousy and caution. They who acknowledge that they participated in the crime which is charged upon the prisoners, are not to be received on the same footing with honest and loyal men of untainted character. You will look at their evidence; you will watch their demeanour; you will observe whether, in the relation of their story, they present means of contradiction, because, if men are fabricating a story, they will take care to give no means of contradiction—they will lay the scene as between themselves and the persons accused alone, and thus deprive the accused of the means of defence which might arise from the contradiction of their evidence. But, above all, you will look to the confirmation which they shall receive from other sources.—Confirmation as to what took place in their consultation-rooms it is absolutely impossible they should receive, for none but accomplices can know what passes there; but if you find that in every instance in which they can, it will be impossible for you to doubt that they are speaking truth in those parts in which they do not receive confirmation, only because in the nature of things they cannot receive it.

The confirmation of the accomplices that will be given to you by the witnesses which we shall call, will be the most complete and the most perfect that, in a long experience in the profession, I remember ever to have heard.

The principal accomplice, Adams, will be confirmed as to the meetings in Fox-court, by the apprentice of Brunt, who lived with his master, who saw those meetings, who saw the persons who attended them, who saw them go out on Wednesday the 23rd, who saw his master return in a dirty condition which showed he had been engaged in some conflict, who heard him divulge to his wife that it was "all up," that the officers had come in upon them, and that he had escaped only with his life.

The accomplice will receive confirmation in another point, which I omitted in the course of my relation to state to you; for on the last day on which they were assembled, it was considered that some proclamations would be necessary to be issued to the multitude during their operations in the night; it was suggested, that cartridge paper would be convenient paper for the purpose. Brunt sent his apprentice to purchase six sheets of cartridge paper; on them Thistlewood wrote his proclamations in these words, "Your tyrants are destroyed.

The friends of liberty are desired to come forward, as the provisional government is now sitting." It will be proved to you by the apprentice,—not that the proclamation was written, not that it was read, for he was not in the room,—but that he was sent for the paper, that he purchased the paper, that he gave it to his master Brunt, and that Brunt carried it into the room in which Thistlewood and the other persons were assembled.

Another confirmation occurs from this circumstance; some alarm had been excited, from an incident that was communicated to them, that their meetings were suspected by government, and that information had reached the office of lord Sidmouth, who you know is secretary of state for the home department; and it was resolved, therefore, that sentries should be placed in Grosvenor-square, to watch the house of lord Harrowby, to see whether police officers or soldiers were introduced into it; concluding, that if that were not the case, they might proceed safely, because they might suppose that no information whatever had been given. Sentries were accordingly placed; the prisoner Davidson was sentry on the Tuesday-evening, from six o'clock till nine; and we will prove to you by the watchman, that he was there sauntering about. Brunt and Adams went from nine till twelve; during a part of the time they went to take refreshment in a public-house; and we will call a person who saw them there, and who played at dominos for some time with Brunt in that public-house. These are important confirmations of the account which will be given you by the accomplice.

Another and very important confirmation arises from disclosures made to a person of the name of Hiden; he was solicited to take a part in this guilty plan; it was divulged to him very distinctly by one of the prisoners; he appeared to listen to it, for he naturally supposed that the person who was so confided in, and who should at once reject it, would not be very safe; indeed, he was given so to understand, but he showed that it was not his intention to partake in it, by immediately writing a letter to lord Castlereagh, to communicate it to him, by endeavouring to get access to lord Castlereagh—not getting access to him, by going to the house of lord Harrowby—by following him to the park, and giving to him the letter, and afterwards by an appointment with lord Harrowby, meeting him the next morning (Wednesday the 23rd) in Hyde-park, and making further communications to him. This, gentlemen, is complete confirmation, for the plan in its detail was given to him, and as the time approached still nearer (namely, on the afternoon of Wednesday) he saw some of the conspirators upon the spot, and among them the prisoner Davidson; and the time was appointed for him to join those who were then assembled in the loft.

Further confirmation arises from the search of the back room in Fox-court, the next morn-

ing, when Brunt was apprehended, when there were found a pike-staff, gunpowder, gunpowder in flannel bags as cartridges for cannon, hand-grenades, and fire balls, which Brunt was packing up for the purpose of sending to the house of another of his associates, where he thought they might be deposited with more safety than in his own.

Further confirmation arises from the search on that same morning in the house of the prisoner Tidd, where were found more hand-grenades, more fire-balls, a number of pike-staves, a quantity of gunpowder, many of those cartridges for cannon, and an immense number of musket-cartridges made up in parcels of fives. This lodging of Tidd's I stated to you had been used as the dépôt, where their ammunition was placed.—The finding this quantity there, is considerable confirmation of the evidence of the accomplice.

But if all these confirmations were blotted out, if no one of them existed, it appears to me that Cato-street itself is confirmation above all confirmations; that alone proves that the accomplices are speaking truth. There are found assembled in a hay-loft, a man in the rank of a gentleman, with five-and-twenty mechanics, with this vast store of arms for different purposes; when they are found they make that desperate resistance which is never made but by persons who know that when they are taken their lives are forfeited to the law; the finding them assembled there, the magazine of arms with which they were provided, and their conduct when surprised, all combine to demonstrate their purpose; and if any thing more were necessary, the prisoner Davidson, when he was taken, exclaimed "damn him who will not die in liberty's cause." Thus do assassins and traitors profane the name of liberty. It has been their cant in all times. These men have conspired to destroy the government under which we live, and to substitute a government of their own. To deprive us of the rights and the laws which we inherit from our ancestors, and to give us in exchange their own rule and dominion, commencing in and to be cemented by the most atrocious crimes.

In answer to this case, what defence is to be made? It will be said, perhaps, "true it is there was a plot to assassinate his majesty's ministers, but the assassination of his majesty's ministers is not of itself high treason." Undoubtedly it is not; the assassination of all the Privy council, aye and all the members of both Houses of Parliament, singly and individually, and with no other object (if such a thing were possible), is not of itself high treason; but for what but a treasonable purpose could such a black and guilty design enter into the heart even of the most depraved and abandoned of mankind? These miserable men had never come in contact with his majesty's ministers, so as to harbour private malice or private revenge against them; they had no hatred or malice against lord Harrowby, it was against

the president of the council; none against the earl of Liverpool, it was against the first lord of the Treasury; none against the hero of fifty victories, but the master general of the Ordnance. The private characters of the ministers are above all reproach; their personal virtues have secured them the esteem not less of those who politically differ from them, than of those who are their professed friends and supporters. To say that ministers have not given satisfaction to all, is to say that they are but men, and that we are but men. Whatever political differences exist, no man can doubt but that they must wish to identify themselves with the greatness and the glory of their country. They have conducted the affairs of the state in arduous and critical times. If, after the exhaustion of a long and expensive war, the people are now suffering some of its consequences, let it be recollected that the country stands on a proud and commanding eminence, and that it has acquired and maintained a character not unworthy of its ancient renown.

Political differences among Englishmen have never led to a crime so black and atrocious as assassination; and for none other than the treasonable purpose imputed could these men, have ever entertained such a design. That assassination was to be the commencement of those operations which they vainly hoped would end in the substitution of themselves in the places of those whom they were to assassinate, and in the establishment of that provisional government which could be established only by the deposition of the king.

It may next be said that the project was weak, that their means were totally inadequate to their end, that their numbers were unequal to the accomplishment of their purpose. There never yet stood at the bar of this or any other tribunal men accused of a treasonable conspiracy of whom that observation might not be made, and of most of them with infinitely more truth than in the present case. History is full of weak plans, of ill-contrived plots and abortive conspiracies; but are we on that account to reject all history? Nay, our own times have furnished us with instances of conspiracies more weak, with means more inadequate, conceived by men of higher intellect and far better means of information. Colonel Despard was an officer of great military skill and experience;—his plan, compared with the plan of these conspirators, was weak and puerile.

In the cool consideration of detected and defeated projects we are apt to reject that as impracticable and visionary which political enthusiasts have contemplated as easy of execution. These guilty men—founding their hopes on the existence of popular discontent (which discontent had been excited and fomented for some months before by speeches and writings of the most flagitious character) which they supposed to have spread further and wider than it had, heating each other's minds by seditious and treasonable discourse,

till they persuaded themselves that all men thought and felt as they did, that they wished for a change, and were ready to enlist under their standard,—imagined that if they could but strike some great and frightful blow, if they could but destroy those who were intrusted with the supreme administration of affairs, and introduce confusion, and inspire terror into the metropolis by means of conflagrations, that they could then carry on their further operations by the armed men whom they had provided, and that they might count on such an increase of force from malcontents as might enable them to subvert that government which was the object of their hatred. Although the design was impracticable, I admit, with respect to ultimate success, yet as to temporary suspension of the functions of government, and temporary confusion and anarchy, I am afraid that, however the design is to be branded as wicked and atrocious, it does not bear the character of weakness and of folly.

This is the case which we shall lay before you; you will hear and you will attend to the evidence according to which you are sworn to decide, and you will follow that evidence implicitly, whether it lead to a verdict of conviction or of acquittal.

Mr. Baron Garrow.—Is it wished that the other prisoners should be put to the bar.

Mr. Attorney General.—If your lordship pleases.

Mr. Baron Garrow.—Perhaps I ought to address myself to the counsel for the prisoners as well as the counsel for the Crown. It is merely to enable the witnesses to speak to their identity; but if it is understood that when they speak of *A.* they are speaking of the prisoner *A.* and that when they speak of *B.* they are speaking of the prisoner *B.* it may not be necessary.

Mr. Adolphus.—I have no wish at all, my lord, upon the subject.

Mr. Baron Garrow.—It is better, perhaps, that they should come, to prevent any mistake of their persons; it is for the prisoners' benefit that they should be there certainly when they are spoken of.

James William Wilson, John Harrison, Richard Bradburn, John Shaw Strange, James Gilchrist, and Charles Cooper were placed at the bar behind the prisoners on trial.

EVIDENCE FOR THE CROWN.

Robert Adams sworn.—Examined by
Mr. Solicitor General.

What are you by trade?—A shoemaker.

Where did you live before you were in confinement?—No. 4, Hole-in-the-wall passage, Brook's-market.

You are now come up in custody?—Yes.

Were you ever in the army?—Yes.

In what regiment?—The royal regiment of Horse-guards.

The Blues?—Yes.

When did you leave the army?—About eighteen years ago.

Do you know the prisoner, John Thomas Brunt?—Yes.

Where did you first become acquainted with him?—At Cambray, in France.

How long is that ago?—In 1816.

Was the English army at that time at Cambray?—Yes, the head-quarters were.

What were you doing at that time at Cambray?—Following my trade.

With the army?—Yes.

Do you remember seeing Brunt early in the present year at his lodgings?—Yes.

Where were his lodgings?—In Fox-court, Gray's-inn-lane.

What was Brunt by trade?—A hoot-closer.

Did he make any proposal about introducing you to Thistlewood?—Yes.

Did you, in consequence of that, accompany him to Thistlewood's lodgings?—I did.

When was that as nearly as you can recollect?—The 12th of January, a Wednesday.

Did you go alone with him, or was there any other person in company?—Brunt and Ings.

Tell us what passed at Thistlewood's lodgings when you went with Brunt and Ings?—On Brunt introducing me to Thistlewood, Brunt said to Thistlewood "this was the man I was speaking to you about." Thistlewood said, "you were in the Life-guards?" I told him "No, I belonged formerly to the Oxford-blues;" he says, "I presume you are a good soldier?" and after that, that he supposed that I was a good swordsman; I told him I once was, and that I could use the sword now if it were required to defend myself, but it was a long time since I had used a sword or arms of any description; he turned the discourse upon the different shopkeepers of London particularly, saying they were a set of aristocrats altogether, and that they were all working under one system of government, and he should glory to see the day that the shops were shut up, and well plundered; he turned his discourse upon Mr. Hunt, saying Mr. Hunt was a coward, and no friend to the people; that he had no doubt, could he get into Whitehall, and overlook the books, he should find his name there as a spy to the government; he next turned his discourse upon Mr. Cobbett, that Mr. Cobbett, with all his writings, he did not consider as any friend to the people, and he had no doubt upon his mind that Cobbett was a spy equally the same.

Did any thing further pass at that meeting that you recollect?—Mr. Brunt alluded to two men that he had to call upon in Carnaby-market; and asked Mr. Thistlewood if he would walk with him; Thistlewood refused this, saying he had somewhere to call; before we left the room, Brunt told Thistlewood respecting of a blunderbuss that was to be raffled

for, and asked him if he would be there; Thistlewood, to the best of my recollection, told him that he would.

Did you then leave Thistlewood?—On this, I believe we left; I do not recollect any thing else at that time.

On going from Brunt's to Thistlewood's, or at any other time had Brunt stated any thing to you as to any plan they had in agitation?—A plan was stated to me previously to our getting to Thistlewood's.

What did he state to you?—He told me there was a plan that was drawn up by two or three, and he had no doubt, if I would consent to join them, it would meet my approbation.

Did he tell you what this plan was?—This plan was to assassinate the ministers, the first time they met together to dine.

That was before you arrived at Thistlewood's?—Yes, it was; he likewise told me at this time, "besides," says he, "we have got information where the thieves keep their money, to the amount of upwards of three million all in hard specie; after we have done this we intend to go to that place and plunder it."

Did he say where the place was?—Not at that time.

Some time after this, were you in confinement for debt?—I was.

In the Whitecross-street prison?—Yes.

When did you come out of prison?—The day after the death of our late king.

That was the 30th of January, the Sunday?—Yes.

After you had come out of prison, did you go to any meeting in Fox-court?—On the Monday evening I called.

You have told us that Brunt lived in Fox-court?—He did.

Was that room in the same house in which Brunt lived?—On the same floor.

Brunt lived in the two-pair of stairs front room?—Yes.

This meeting was in the back room?—Yes.

Did you learn from Brunt who hired that room?—I heard him say he had hired it of the landlady for Ings.

Was there any furniture in that room?—Only a stove fixed.

Did meetings continue to be held in that room up to the 23rd of February?—They were held twice a day, except that there was none on Sunday evenings.

What persons usually attended those meetings?—Thistlewood, Brunt, Ings, Hall, Davidson, Harrison, Wilson, Bradburn, Tidd occasionally.

Any more that you remember?—Edwards.

Do you remember the names of any more, at this moment?—Not at this moment.

You tell us you came out of prison on the 30th of January; that, on Monday evening, the day afterwards, you attended one of those meetings?—Yes.

Can you tell us any thing particular that passed at those meetings?—Not on the Monday night.

Do you recollect any time when Harrison was there?—A Wednesday night.

When you went to the room, whom did you find there?—I saw Thistlewood, Harrison, and in the course of the evening Ings was there, and Wilson, and Edwards.

Tell us what passed when you went in?—When I went in, Thistlewood and Harrison seemed in deep discourse, respecting some conversation they had heard; information they had gained of the life-guards and foot-guards being to leave London to attend the funeral of the late king. Harrison was told by a life-guardsman, that every man in the life-guards that could be mounted and could be spared, was to attend the funeral of the late king, as well as the foot-guards, and likewise the police officers; after he had left the life-guardsman, he said it came to his mind that it would be an excellent opportunity to kick up a row in London that night. Mr. Thistlewood agreed to the plan; and proposed that it should be done by collecting what men they had among themselves together, and to take the cannon in Gray's-inn-lane, as well as the cannon in the Artillery-ground, and likewise for the fire-balls to be made use of to set fire to the different buildings; thinking it would be an excellent opportunity, as the soldiers and what police officers could be spared would be out of London, that there would not be sufficient strength left in London to protect it.

What further passed?—Thistlewood said, it would be necessary to send a party up to Hyde Park corner, in order to prevent any orderly leaving London for Windsor to communicate what was passing in London.

Any thing further?—He likewise proposed, that the telegraph over the water should be taken, in order to prevent it communicating any intelligence to Woolwich.

Did this plan meet with the assent of those persons who were at that time assembled?—It met with the assent of those persons then in the room.

After that, did Brunt and any other person come into the room?—Brunt and Ings at this time.

When Brunt and Ings came into the room, was this plan which had been in agitation communicated to them?—It was communicated to them by Thistlewood.

On its being communicated to them by Thistlewood, what passed?—Brunt and Ings both declared there was nothing short of the assassination of the ministers which they had in view, that could satisfy them.

In consequence of this, was that project which had been so mentioned given up?—It was.

Do you recollect a meeting which took place on Saturday the 19th of February?—Yes.

Who was at that meeting?—There were Thistlewood, Harrison, Brunt, Ings and Hall.

What passed at that meeting?—On my going into the room, they seemed to be in a

study between themselves ; they got up, and Thistlewood said, "well, it is agreed on, that if nothing happens between this and next Wednesday night, on Wednesday night to go to work."

Did any thing further pass at that meeting ?—Yes ; Thistlewood gave instructions to Brunt.

Did he assign any reason why they must go to work the next Wednesday night ?—The reason he assigned was, that they were all so poor they could wait no longer ; he gave instructions to Brunt, and those in the room, that there should be a meeting sit the next morning at nine o'clock, to draw up a plan to settle how they should act.

Did they separate after that ?—Yes, at least they went away.

Did a meeting take place on the next morning ?—Yes.

Was that meeting larger than usual ?—It was.

Were the prisoners at the bar among the party who met that morning ?—Yes.

Both of them ?—Yes.

Tell us what passed on Sunday morning, the 20th of February ; what time did you get there ?—Just before eleven o'clock ; Thistlewood said, on looking round, "there are twelve of us, it is time to proceed to business ;" he proposed Tidd to take the chair. Tidd takes the chair with a pike in his hand ; and he began by stating, that "we," he said, "have come to a determination, that if nothing transpires between this and next Wednesday night, we intend to go to work, for we have been waiting so long expecting the ministers to dine together ; finding they do not, we intend if nothing happens, that they do dine together between this and that, to take them separately." On this, he began to propose his plan, saying, he intended to take the two pieces of cannon in Gray's-inn-lane, the six cannon in the Artillery-ground, and for Mr. Palin to take upon himself to set fire to the different buildings.

Was Palin to do that alone, or how ?—He was to have assistance from men that he had collected himself. Mr. Thistlewood said, this was an outline of the plan at present ; and as Mr. Brunt had got a plan to propose respecting the assassination, he should drop it for the present, and leave it to Mr. Brunt to speak.

Upon this what took place ?—Upon this Brunt came forwards to explain his plan ; Thistlewood stopped him, saying "let my plan first be put from the chair ; if any one in the room has any thing to say upon it let him speak."

Was it put from the chair ?—Yes ; and agreed to by all present.

The prisoner, Tidd, being in the chair ?—Yes.

After this was put from the chair and agreed to, what took place ? did Brunt come forward ?—Brunt came forward, and spoke to this effect : Brunt said, as we cannot get the mi-

nisters all together, as it was proposed to take them separate, I propose to you there shall be as many as we think we can take ; as many men as we can get shall be separated into so many parts, and from each allotment there shall be a man drawn, and that man that is drawn, is the man that is to do the deed.

The men should be divided into a certain number of parts, and from each part a man drawn for the purpose of committing each murder ?—Yes, just so ; that man that the lot fell upon, if he attempted it and did not do the thing, if there was any signs of cowardice, he should be run through upon the spot directly ; upon this I got up myself ; I asked him if he thought it was impossible for a man to attempt to do a thing of that kind and fail ; says I, "if a man fails, is he to be run through on the spot immediately ;" he said "no, unless there is signs that he is a coward." This motion was put from the chair as before, and agreed to ; directly after this, in came Palin, Potter and Strange.

Palin, whose name you have before-mentioned, and Potter and Strange, came into the room ?—Yes.

Was that the Palin who was to head the party for firing ?—Yes.

On their coming into the room, were the circumstances that had passed communicated to them ?—Yes, they were ; and they agreed to them after Thistlewood and Brunt had communicated the same to those as he had to all in the room before ; Palin got up to speak to the chairman, saying he wished to say something, that he had paid due attention, and that he amongst the rest had agreed to what had been proposed ; but he wished to know how those things, as they had so many objects to be carried at the same time, were to be done ; "you talk of the West-end job taking from forty to fifty men."

Had that number been mentioned for that called the West-end job ?—Yes, it had been by Thistlewood.

What was the meaning of the West-end job ?—That meant the assassination of the ministers ; it was so called.

And from forty to fifty men were thought necessary for that purpose ?—Yes. "You talk of taking the two pieces of cannon from Gray's-inn-lane, and six pieces of cannon from the Artillery-ground, and my setting fire to the buildings ; I wish to know how this is to be done ; you ought to know whether you have men to depend upon sufficient : I cannot give you any satisfaction on that point till I can see what men I can speak to ; I wish to have instructions from here whether I can communicate to them what has passed here this morning."

What was answered to that ?—It was said from the chair, Thistlewood and Brunt, that there was no doubt that Palin certainly knew the men he had spoken to respecting it ; if Palin was satisfied within himself that he had got such men as he could depend upon, he

was at liberty to act, and to tell them what had passed.

Upon that was he satisfied?—Upon that he sat down satisfied.

After this had taken place, did the meeting break up?—The chair was left upon this.

Did any thing further take place?—They were pretty well all standing; at this time Thistlewood suddenly turns himself round, "Oh, Brunt, well thought of, now as Palin is here, you may as well take him to this spot close by here, and let him see whether he thinks it is practicable."

What place was that?—That place was Furnival's-inn-buildings.

Furnival's-inn-buildings was at that time not finished?—The back part of it was not.

Was that near the back of Fox-court?—Yes.

In consequence of that, did Brunt and Palin go out?—They did.

Did they return before you quitted the place?—They did.

What passed, on their return?—On their return, Mr. Palin gave it in that it was a very good job, and a very easy one, and would make a very good fire.

Did any thing further pass on that occasion?—Yes; Thistlewood said, that it would be highly necessary (if it was possible) to get the men together, and to communicate their intentions to have them, if possible, to give them a treat; but he said he did not know how it was to be done, for they were all so poor; on this, Brunt turned himself to the fire, walked across the room and back again, and said he had a pound note he had reserved for the purpose, though he had done little or no work lately, but he would be damned if he did not spend it upon his men; Thistlewood said, "where shall we take them to? I suppose Hobbs would have no objection to letting us have the room up stairs."

Hobbs kept the White Hart?—Yes.

Had there been any meetings at the White Hart previous to those meetings held in the back room at Brunt's lodgings?—Yes.

Were those meetings held in a room at the White Hart, or in a back room?—In a back room in the yard. Those meetings were discontinued while you were in prison for debt?—Yes.

Now proceed.—Brunt said, he did not much like it after what had dropped from my mouth "but never mind," says Brunt, "we can go there, as time gets so short; I do not see what occasion we have to fear the traps," or some expression of that kind.

Had you, in point of fact, made some communication to them of what had passed between you and Hobbs?—Yes; he said he would call on Hobbs, and hear what he had to say; on second recollection, he said he would give his boy a holiday that day, send his wife out, and what men he had to collect together, to have them in his own room.

After this conversation had passed, I believe you separated?—Yes.

Tell us whether you had seen any arms in that back room at different periods?—I had.

Had you seen among other things, any pike-staves?—Yes.

In what state were they?—In the rough.

Had any thing been done to the ends of them?—No more than just as they were cut from the tree they grew on.

Was any thing done after they were brought in there?—Bradburn sawed the ends of them off with a saw, and ferruled them.

Was that done in that back room?—Yes.

Were there any sockets or holes made in them?—Yes.

After those ferrules had been put on in the manner you described, by Bradburn, what passed?—There was an alteration, it was considered, after the ends of the pike stick had been pared down to the ferrule that was knocked down, that the pike staff was so weak it would not support the pike; in consequence of that, every ferrule was cut off again, and bigger ones were got and put on.

Was that done also in the room?—Yes.

Besides those pike-staves, were there any hand-grenades brought there?—There were some that were brought in there ready made, and some made there.

Did you see Davidson do any thing there?—Yes, Davidson and Harrison; there was a kind of a thing that was wound round a tin case first, and some pitch that was melted in an iron-pot; after this was put in, there were some nails bound round.

Did you see Harrison make any of them?—Yes.

Did you see Davidson also do any thing towards making them?—I did.

Was there any other place where they were afterwards carried to?—They were carried to Tidd's.

To Tidd's lodgings?—Yes, in Hole-in-the-wall passage.

What was that called?—The dépôt.

Who was it that suggested they should be removed from the room?—Thistlewood.

What reason did he give?—He assigned the reason, that there should be nothing kept in that room, in case there should be any persons come to that room who might give information.

In consequence of that, were the things from time to time removed to Tidd's?—They were.

Do you remember a meeting which took place on the Tuesday morning, the 22nd of February?—Yes.

The meeting of which you have been speaking was the Sunday?—Yes.

Where was that meeting on the Tuesday held?—In the same room as Brunt's.

About what time?—About ten o'clock.

Who were the persons present?—There was Thistlewood, Brunt; there was Hall; there was Ings at this time; and, just after this, Edwards comes in, and brings the account of the information he had seen in the paper, of a dinner that was to be held on the Wednesday night.

A cabinet dinner?—Yes.

At what place?—Lord Harrowby's, in Grosvenor-square.

In consequence of this, was a newspaper sent for?—Yes; Hall fetched it.

Did it appear by the newspaper that the information was true?—Yes.

What passed on this information being communicated?—On this being communicated, Brunt expressed himself, "now, damn my eyes," says he, "I believe there is a God; I have often prayed that those thieves may be called together, that we may have an opportunity to destroy them, and now" says he, "God has heard my prayer."

Was any thing else said, that you remember?—Ings was equally alive to it; upon this Thistlewood proposed that there should be a committee sit directly, in order to alter the plan of assassination which had been agreed on on the Sunday.

Referring to the plan of individual assassination?—Yes; my sitting in the chair, Thistlewood proposed me to take the chair; I takes the chair, and called to order. Thistlewood was going to speak; I interrupted him; I said, "Gentlemen, I hope from what fell from my mouth yesterday morning, you have given it a due consideration."

That was the communication that had been made to you by Hobbs, the landlord of the White Hart?—Yes.

Suggesting something, I believe, respecting the police officers having inquired at Hobbs's;—Yes.

You communicated that to the meeting?—I did.

Tell us what took place?—Upon this Brunt put himself into a bit of a passion, and so did all of them, and particularly Harrison, so much that he walked about and threatened the first man that attempted to fling cold water upon the concern, he would run that man through directly with a sword; upon this I opened my coat in this way, and said, Harrison, if you have any conception that I am not a friend to you and every man in this room, do it now; Palin and Potter and Bradburn were in the room; Palin got up, surprised from what he had seen, and walked across the room; and Palin was the man that holla'd out, insisting on my being heard.

Was Hall in the room at that time?—He was.

In consequence of this conversation that took place, did Brunt make any proposal?—On Mr. Palin insisting on some explanation being given of that I had alluded to, Brunt got up and said he would get up and tell the whole; Brunt got up and communicated it.

Did Brunt make any proposition?—He made a proposition, that lord Harrowby's house should be watched.

When was that watch to commence?—At six o'clock that evening.

Who were the two men that were at the first on the watch?—Davidson was one, but

the other I cannot remember, and Brunt and Tidd were to relieve them.

When were they to relieve them?—At nine o'clock.

It was to be a three hours watch?—Yes.

Were Davidson and Tidd both present in the room at that time?—Yes.

Was it said why that watch was to be appointed?—That watch was to be appointed to see if there were any police officer entered the house, or any soldiers; if there was any thing of that kind entered the house of lord Harrowby, it was to be communicated to the committee; if there was nothing of that kind seen, Brunt insisted upon it that the business should be done the following night.

After this did you separate?—No, we did not; after this proposition of Brunt's was settled, Thistlewood directly proposed Tidd to take the chair, in consequence of my interrupting their business.

Did Tidd take the chair then?—Yes, he did; then Thistlewood came forward with the proposition of a fresh plan, respecting the assassination of the ministers; he proposed going himself to lord Harrowby's door with a note in his hand, for the servant to give to his master, telling him he must have an answer; at the time he got in, the others were to rush in after him, and to secure the servants, presenting a pistol to their breast, threatening them with instant death in case they made any resistance; at the same time other persons were to go to take command of the stairs leading to the bottom part of the house; another party to take the command of the stairs to the upper part of the house, and two men to the area; these men were to take, to each station, a hand-grenade a piece, as well as pistols and blunderbuss; if any servants attempted to retreat from the upper or lower part of the house, or the area, a hand-grenade was to be thrown among them, with a view to destroy them; at the same time it was proposed that they should enter the room. Ings was the man that offered himself to take the command, to lead into the room. Ings proposed to go in this kind of way; as soon as he entered the room he was to accost their lordships by saying, "Now, my lords, I have as good men here as the Manchester yeomanry; enter citizens and do your duty;" and two swordsmen were to follow in after him.

Who were the two swordsmen?—I was one myself, and Harrison another.

Harrison had been in the Life-guards?—He had; on this being done, the swordsmen entering the room, followed by the pike-men, Ings declared he would follow and cut every head off as he came to them.

What was Ings by trade?—I always was led to believe that he was a butcher; and as well as that, he proposed to cut one of lord Castlereagh's hands off. Ings had two bags with him.

What was he to do with the bags?—He proposed to bring away the heads of lord

Castlereagh and lord Sidmouth in the bags; he would have one of lord Castlereagh's hands, saying, that he would cure that, as it would be thought a great deal of in a future day. Ings had on a former day said, he would exhibit those heads on poles, and carry them through the streets; on the house being left, after they had done what they had to do, it was proposed, and Harrison undertook it, to go to the King-street barracks, and set fire to the shed where the straw and hay were deposited, and to destroy the whole building.

Was any further use to be made of the heads, when they were brought away?—Yes, this thing was often talked of; this discourse finished on the Wednesday afternoon; those heads, after they were brought away, which had been proposed by Ings, saying he would exhibit them about on a pole, Thistlewood said, "no, the best way of carrying them will be to put them on a pike each, and carry them behind the cannon to terrify the people, to make them believe that there was somebody of more consequence than they were aware of at the head of them."

Was any further use to be made of either of them after that, of lord Castlereagh's head for instance?—It was proposed after this, by Bradburn, after it had been exhibited about the streets for two or three days, says he, "I will make a box and inclose it, and send it to Ireland, or take it over myself to be exhibited there."

Did any thing further pass at that meeting, as to the plan?—Yes, it was proposed that after they had done at lord Harrowby's, Harrison was to go to the horse barracks, supported by Wilson, to set them on fire, by a ball prepared for that purpose, and others were to proceed to Gray's-inn-lane; if they met with any interruption from the people, it was proposed to run the pikes through them, and to fire upon them occasionally; and after they met the party in Gray's-inn-lane, to assist them in taking those two pieces of cannon at the Light-horse stables, and to proceed from there to the Artillery-ground to take the six cannon there.

Who was to head the party that was to take the six cannon at the Artillery-ground?—Cook; after Cook had got the six pieces of cannon he was to lead them, and bring them into the street, and if there was any interruption to fire; if he found the people came over to him, to enable him to advance, he was to advance to the Mansion-house, divide the cannon into two parts, place three on each side of the Mansion-house, and demand an entrance; and if it was refused, fire upon it on both sides.

What was to be done with the Mansion-house?—The Mansion-house was proposed, by Thistlewood, for the seat of the provisional government.

Cook was not to be of the party at lord Harrowby's?—No, he was to command the party that was to go into the city; then it was proposed that they should take the Bank of

England, and plunder it; but the books were not to be meddled with, as Thistlewood thought, by preserving the books, they would communicate to them something more than they were aware of.

You afterwards broke up, for the purpose of making preparations?—Yes, that is the outline of it.

On the Wednesday, what time did you go there?—I went up about two o'clock, as near as I can guess.

Was any thing said as to a sign or countersign?—Harrison was the man that proposed this; saying the men that had to go round to communicate it to what men they could collect——

It was proposed, then, that the persons there should go round for the purpose of communicating what they had in view to their associates?—Yes.

What was proposed as to that?—Harrison proposed that *button* should be the countersign.

How was that to be?—The man appointed to stand in Oxford-road was to pronounce the letters *b, u, t*, and the man in waiting to say *t, a, s*; on doing this he was to be considered a man friendly to their concern.

Where was that station to be?—The end of Oxford-road, by Tyburn-turnpike.

After they had made those arrangements did you separate for the purposes of preparation?—Yes.

Did Davidson and the other men go upon the watch on the Tuesday, as had been appointed?—Yes, I found Davidson on the watch; but the other man I did not know.

At what time did they go upon the watch?—They went upon the watch at six o'clock.

You state it had been originally proposed, that Tidd and Brunt should go upon the watch at nine o'clock for the purpose of relieving Davidson and his associate?—Yes.

Did they go upon that watch?—They settled for that; but Brunt came back in about five minutes, saying, that Tidd had called at his house, and found the man that he had appointed; and that he was a man of too much consequence to be left, and that therefore he could not go on the watch.

In consequence of that, what proposal was made?—For me to go instead of Tidd.

Did you, in consequence of that, go upon the watch with Brunt instead of Tidd?—Yes, I did.

When you got upon the watch did you see Davidson there?—Yes.

Did you and Brunt continue on the watch till twelve?—Not in the square all the while.

Did you, part of the time, go into any public-house in the neighbourhood?—Yes.

Where was that public-house situate?—At the back of the square; a public-house at the corner of the mews.

Did Brunt do any thing there?—He played at dominos there.

Did you, during that time, go out into the square to see whether all was quiet, and re-

turn again?—Yes; and I went out at eleven o'clock, and stopped till the turn of twelve, and then went home.

You found all quiet?—Yes.

Do you recollect on Tuesday afternoon, or evening, going to Fox-court, and smelling any strange smell?—Yes; on going up stairs, I smelt a strange smell; on going in, I found Edwards, Ings, and Hall. Ings and Hall were employed in making illumination-balls to fire the buildings, and Edwards in making the touch-paper for the grenades. Hall was laying the paper on the floor, to receive the balls, to prevent their sticking to the hand.

Did you stay there any time, or go away?—I went away almost directly.

The next day, I believe, you did not go very early to the room did you?—No.

Some business of your own kept you away?—Yes.

What time did you go?—About two o'clock.

Whom did you find when you went there?

—I found Brunt in his own room, the front room.

While you were in that front room, did Strange come in?—Strange was the first man that came in after myself.

Did Strange come in by himself, or accompanied by other persons?—By himself; there were one or two strangers came in afterwards.

What were they employed about?—There were some pistols laid upon the drawers in Brunt's room.

How many?—I saw half a dozen.

What were they doing with those pistols?—They were endeavouring to fix the flints in them.

Was any thing said by Brunt?—On these last men coming in, Brunt proposed they should go into the other room.

Did they in consequence of that go with the pistols into the other room?—Yes.

You went into the other room too?—Yes.

Whom did you find at that time in the other room?—There were no other persons in the room at that time, except those who followed from Brunt's room.

Who came in afterwards?—Thistlewood came in soon afterwards.

Was Ings there?—Not at that time.

Did you see him there in the course of the afternoon?—Yes.

What was Ings doing?—Ings, within a very little time after he came into the room, began to equip himself.

Did any thing take place before Ings came in?—The different strangers that were then in the room were busy in fixing the different flints to their pistols, and likewise the slings to the cutlasses that I saw lying in the room.

Did any body make any proposition to them?—Not as yet; on Thistlewood coming into the room, he looks round.

When Thistlewood came in, were they preparing themselves?—Yes, they were; and he said, "this looks something like as if you were going to work;" he claps his hand on

my shoulder, and asked me how I did; I said "I am rather unwell, and very low in spirits;" in consequence of this, he proposed to Brunt to send for something to drink to put me in spirits; and he proposed directly after this, that there should be some paper fetched, as he wanted to draw up some bills, and money was produced from Thistlewood to Brunt.

Was any thing said about the sort of paper?—Thistlewood wanted such paper as the newspapers were printed upon; he did not know the name of it, and I proposed to him to have some cartridge paper; in consequence of this, cartridge paper was sent for, and Brunt said his apprentice or his boy should fetch it.

Brunt has a son as well as an apprentice?—Yes.

Did Brunt go out for that purpose?—Yes, and the cartridge paper was brought.

Was there any table in the room?—A table and chair were brought in from Brunt's room at the time.

What was done with them?—Thistlewood sat down, and wrote three bills?

What were the contents of those bills?—Thistlewood wrote "Your tyrants are destroyed. The friends of liberty are called upon to come forward. The provisional government is now sitting. James Ings, secretary. February 23rd, 1820."

As he was writing the third bill, did you make any observation upon him?—On my looking at Thistlewood, I perceived him to be very much agitated, and he could not write any more, and he wished somebody else to take the pen, and proposed Hall to take the pen; Hall refused it; there was another man, a strange man, in the room, who refused at first to take the pen, but afterwards took it.

Did he proceed to write any other bill?—Yes, he did.

We must not ask you the contents of that bill; what was to be done with those bills?—Those bills were to be stuck up at the side of different buildings that were to be set fire to, in order to communicate to the public what had been done.

After those bills were written, what further took place at the meeting? how was Ings equipped?—Ings equipped himself by putting a black belt round his loins, another hanging upon his shoulder to support the cutlass with, with a couple of bags in the form of a soldier's haversack.

Were these under his great coat?—One over each shoulder.

Under his great coat?—Under the coat he wore at top, he put on his great coat afterwards; the belt round his loins was to contain a brace of pistols, a belt for his cutlass; and on viewing himself, he perceived that he had forgotten to bring his steel.

Had he any knife?—Yes, a large butcher's knife, with wax-end round the handle.

Was he asked any question why the wax-end was wound round the handle?—Yes, he

was asked the reason, and he said it was to prevent its slipping in his hand when he was doing the job.

Was that like a butcher's knife?—No, a butcher's knife is sharp at the point; he said he had procured it for that purpose; about this time Bradburn came up, saying he wished Thistlewood to send some person to the men he had collected together, at a spot where they might be more handy.

Who was appointed for that purpose?—Tidd was appointed; Tidd was not very willing to go, as he said, because they were Irishmen; he thought it would be better for one of their own country to go; for one of their own country would do better with them.

Did he at last go?—Yes, he did.

Do you happen to recollect how the prisoner Davidson was accoutred?—I cannot charge my memory that I saw any thing of that kind.

Tidd.—My lord, I did not understand the evidence the last time he brought my name into question.

Mr. Baron Garrow.—You do very rightly, if any thing passes which you do not hear distinctly, to inform us of it, and it shall be repeated: the last he has stated respecting you was, that on Bradburn coming up, and saying he wished Thistlewood to send some person to the men he had collected near the spot, you were desired to go; that at first you rather objected to that, stating that the men who were to be met were Irish, and that one of their own countrymen would manage better with them than you who were English, and that you at last consented.

Tidd.—You have made a mistake there.

Mr. Baron Garrow.—You will have an opportunity, by your counsel or yourself, to put any questions that you think proper; but it is not only more regular, but it is more advantageous to you to wait till he has concluded his examination before you put any questions; you shall have the full opportunity in its proper time.

Mr. Solicitor General.—Do you remember Palin's coming in?—Yes.

On his coming in, did any thing pass?—Yes; Palin, seizing the opportunity of Thistlewood and Brunt being out of the room, begins to address himself to what were in the room; saying, "Gentlemen, what you are met here for, I hope you all know what it is; if such, I hope you will give it a consideration; first ask yourselves respecting the deed of the assassination, whether you conceive, within yourselves, it will be a matter of consequence to your country; if you conceive it will be of consequence to your country, then in the next place you ought to come to a determination to stick true to each other; unless you come to this determination, you can do no good; any man that is seen, after you begin this, to show

the least signs of cowardice, that man ought to be run through upon the spot;" a tall man that was in the room, whose name I do not know, spoke, saying he could pretty well see the meaning of his speech; "but," says he, "you speak as if all that were in the room knew what we were met here for; that is what I and some of us wish to know; I am not a man that am afraid of myself, nor should any man that turns out on such a thing as this be afraid of his life; I will be the first man, if I see any man a coward, to run him through." Palin was going to speak again; at this moment, in came Brunt into the room.

Did Brunt come alone, or Brunt and Thistlewood?—Brunt alone. Brunt seeing, as it appeared to me, an alteration in the countenances of the men in the room, wished to know the cause; he was told that there were those in the room, who did not know what they were met there upon, and wished to know. Brunt said directly, "This is not the room where you are to be informed, go along with me to the room in the Edgware-road, there I will tell you." Brunt said then, "any man that goes along with me, I will treat him with a drop of something that is good, in order to put them in spirits for what they are going about." The tall man made answer, "I hope whoever is going on this piece of business will not go and drink, for a drunken man in such a business as this is not fit to be trusted; for a man so doing would throw himself into the hands of his enemies." On this Brunt began to put the men on the move to go to the Edgware-road, saying (and that was the first time I heard that), that Palin would want that room to bring his men to.

Davidson.—Mr. Attorney-general, you asked the witness how Davidson was accoutred; does the witness mean to say that I was at Fox-court that evening.

Mr. Solicitor-General.—Was Davidson at Fox-court that evening?—I have not said he was: I did not see him there that afternoon, at the time I am speaking of.

You have given an account of meetings that took place from the beginning of January to the 23rd of February; was Davidson frequently at those meetings in that place?—Yes.

But he was not at the particular meeting to which you now speak?—No, he was not.

Mr. Baron Garrow.—I have been looking to my note of what passed on a former day, as well as the present, and he did not name you as one of the persons present at that time.

Davidson.—Thank you, my lord.

Mr. Solicitor General.—Was he at the meeting on Sunday, when this meeting was arranged?—Yes, he was.

And he had been at several of the previous?—Yes; the first of my knowing Davidson was on the 10th of January,

: That was before you went to prison?—Yes.

After this had taken place, and Brunt put the men on the move, did you go up Oxford-street?—I did.

Did you meet Thistlewood in the Edgware-road?—Yes.

Was Brunt with you at that time?—Brunt and another man.

Did you all go together to the stable in Cato-street?—Yes.

When you went into the stable did you see any person in the stable on the ground floor?—I saw Davidson sitting, and Wilson standing, apparently, as it appeared to me in walking along, doing something to the pikes.

Did you go up into the loft?—I did.

How many men did you find assembled altogether, including those that were below?—There were about six or seven of them, or there might be more.

What was there up stairs in the room?—On the bench in the room, there were pistols and cutlasses.

What kind of a bench was it?—I did not take particular notice of the bench.

Was it like a carpenter's bench?—Yes.

What passed up there; did more men come in?—There were more came in the course of the evening. From the accounts that Thistlewood gave, counting the men that were in the room, there were eighteen men in the room up stairs, and two below, which made twenty.

Did they appear to you to be as numerous as that?—Yes, they did.

Were you yourself armed in any way?—I had a blunderbuss, which I took off and laid upon the bench, and a broomstick, that had been prepared for the reception of a bayonet, for Brunt; I delivered them both.

Was Tidd there at that time?—He was not.

Was Brunt there?—Brunt was up in the loft when I went up.

And Thistlewood went up with you?—Yes, he went up before me.

Did any thing pass about Tidd not being there?—In going up from the stable, Thistlewood and Brunt were in discourse together.

Thistlewood seemed rather agitated, for fear, as it appeared to me afterwards, Tidd would not come. Brunt perceiving there was an alteration in the countenance of what men were in the room, and Ings as well, Ings began to stamp and swear: he hoped they would not stop now; if they did, he should either hang himself or cut his throat. On this, Thistlewood goes to the end of the table; just after this Tidd came.

Had any thing passed about Tidd's not coming?—Brunt turned himself round to the bench, and said, he would venture his life that Tidd would come; that he was confident of it, and shortly after this Tidd came into the room.

Tell us what passed?—I saw Tidd talking to Thistlewood; Thistlewood seemed at this time a little agitated, and so did Tidd himself;

Thistlewood seeing me looking at him turned himself away; Tidd came towards me, and I said to Tidd, "Tidd do not you think this is a pretty set out; do you think it is possible for the men here to do that which is talked of;" Tidd said, "no, it never can be done."

Tidd.—My lord, I have no opportunity of speaking.

Mr. Baron Garrow.—It would be much better for yourself you should postpone it; you may be sure your learned counsel will take a note of it.

Tidd.—It immediately concerns what Mr. Adams said last.

Mr. Baron Garrow.—It is irregular for you to break in, but I would not on that account if you tell me you prefer doing it now; forbid your doing it; but you may be quite sure it is more for your advantage to hear all he says before you put any question, than to break in upon his narrative; if you should omit it in consequence of having your mind occupied, I undertake to remind you before the proper season for your putting questions is gone by.

Mr. Solicitor General.—Did Thistlewood say any thing upon this?—Thistlewood said, "I hope for God's sake you will not think of dropping the concern now, if you do, it will turn out a second Despard's job;" saying, that there were quite men enough in the room, and "you seem to be frightened for fear of not having strength enough." Thistlewood said, "supposing lord Harrowby to have sixteen servants in his house, they will not be prepared as you are; but not only that, but they will be terrified, and from going into the house to coming out of it again, will not exceed ten minutes." He just went over it saying, that fourteen men, he thought, would be enough to go into the room; these fourteen men were proposed, after its first being put to all in the room, whether all in the room present were agreeable to go.

It was put to the persons in the room, whether they were agreeable to go?—Yes.

What was done upon that?—On their consenting to go, there were fourteen men picked out.

For what were those fourteen men picked out?—They were picked out for the sole purpose of going into the room to do the murder.

What were the others to do?—The other six were to secure the servants.

The six were to be employed in the manner you represented before, to guard the stairs and the area?—Yes.

Was any thing done in the way of separating them from the rest?—The men stood at this time where they were, and Brunt produced a bottle, and just at the conclusion of this, I heard a noise down stairs.

I want to know whether the fourteen men moved to any separate part of the room or not?—No, not to the opposite side of the bench;

after the officers came into the room, they sidled into the little room.

Were the fourteen men singled out for the purpose of doing this?—Yes.

What did they do?—They agreed to go into the room.

Who were those men?—There were, Thistlewood was one; Ings was another; Brunt was another; Hall, Wilson, and Davidson was proposed.

Where was he?—He was down below.

Do you remember any more?—I do not know; I have mentioned all the names I know, and Bradburn and some others that I do not know. Were they separated to a different part of the room from the rest?—Those who were to go in.

After that separation had taken place, or while that was going on, was there any alarm given below?—Yes.

Mr. Baron Garrow.—Before this, had any other person made any address to the people?—Mr. Brunt made an address to the people; he turned round to the bench again, and said "You seem to think there is not sufficient strength to go;" he declared that if there were not more than eight or nine men, he himself was determined to go; he directly said if there were not more than five or six men he would go. "We have things here which some of you know nothing about, that will blow the house up, and if I go with five or six and find myself in danger, I will clap fire to it, and blow the house down over our heads."

Mr. Solicitor General.—You state, that while the picking out the men was going forward, you heard a noise below; what kind of noise was that?—The sound of a pistol; directly after this, at the bottom of the ladder, the word was given "Holles, show a light!" on this, Thistlewood turns to the bench, takes the candle, and from that goes to the head of the ladder in the room, looks down, saw they were coming, turned round, and set the candle on the bench; on this they began to sidle off (which was the first time I saw this little room) into the little room; the officers came into the room.

They came up the ladder?—Yes: and took the command of the room, with their pistols presented.

You need not describe what took place at that time, as we shall have that from the officers themselves; I believe the lights were blown out after Smithers was killed?—Yes; as soon as the pistol went off.

And you made your escape?—Yes.

When Thistlewood said that fourteen men would be sufficient to go into the room, was Tidd in the room?—He was; but I am pretty sure that Tidd was not one that was to go into the room.

Was he in the room at the time when they gave the assent to what Thistlewood proposed, that they should go on with the measure?—Yes, he was.

Mr. Baron Garrow.—Was he there when Brunt made the speech you have just stated?—He was.

Was that after you had made the observation to Tidd, "A pretty set out; do you think these men can accomplish the work?"—After I had made the remark.

Mr. Solicitor General.—Both Brunt's and Thistlewood's speeches were after that?—Yes, And Tidd remained in the room?—Yes.

When were you first apprehended?—On Friday the 25th.

When you made your escape, did you go back to your own apartment?—Yes, and remained there till I was apprehended.

You were afterwards, I believe, examined at Whitehall, with the other prisoners?—I was not examined that day.

But you were afterwards?—Yes.

Robert Adams, cross-examined by
Mr. Curwood.

As all the jury have not had the misfortune to meet you three times, just tell me what you told us—that among your other virtues, you abandoned your religion; that is so, is it not?—It was so.

You became a disbeliever in Christianity?—I did.

And that at the age of forty-five years?—Yes.

You do call yourself a christian now?—Yes.

When did you come back to the belief of Christianity?—I may say that I came back to the belief of Christianity about the 24th, but I was convinced before that.

Though you were convinced of it before, you did not come back to the belief till the 24th?—I did not exactly.

That was the day after you were in marvellous great danger of being hanged?—It was so.

So that the fear of the halter brought you back to your old belief?—It might have some effect.

I observe you have very much altered your manner; you do not seem quite so vehement; has any body been talking to you since you were examined here?—No; I do not want any body to talk to me.

You have changed it because you think it somewhat more decent?—No; I am rather unwell.

Had you mixed much in political society before you met Mr. Thistlewood?—Never in my life; I have had my political opinions, but never to join a party.

Was it among your political opinions, that it was lawful to sweep off fifteen men in cold blood?—It never was lawful in my sight.

I dare say you thought it a very atrocious act?—I thought it a very cruel one at the first proposal.

You recollect you told me it was first proposed to you on the 2nd of January?—Yes.

And notwithstanding you thought it so cruel

an act, you consented to be introduced to Mr. Thistlewood ten days after, on the 12th?—I did.

And from the 12th of January to the 23rd of February, when you were disappointed all of you, you still continued to frequent meetings where that matter was debated, settled and determined on?—Yes, I did.

Notwithstanding all your private opinions, and thinking it was a cruel act? look to the jury?—I did; I am not going to enter into debate at all upon it; I shall answer you, yes or no.

And you took no inconsiderable part in those meetings according to your own account;—I have stated every part that I recollect; if you are in possession of any part I have not communicated I am ready to do it.

I am in possession of more than the jury know of you, or than I wish to know?—I will state every thing to the jury.

You were at one time appointed chairman of this committee of assassination?—Yes.

Did you call yourselves so? What did you call yourselves? most committees have a name?—If I may be allowed to make a remark upon that—

Mr. Solicitor General.—Make no remarks, but answer the question. There was no particular name appointed.

Mr. Curwood.—Were they all members of the committee?—They were regular except Cook, on the Sunday morning; that was the first time that the committee met.

A committee is part of a larger body; where was your large body?—The larger body that was got together was in the room in Cato-street; that was the largest number that was ever collected together to my knowledge.

Were they the whole of those you expected to revolutionize the government with?—There was a talk of a vast many more attending.

Do you know of any others?—I do not; not by name.

Could you have brought any men into the field?—No.

Your single sword was all you could contribute?—I never got that, nor the worth of a shot towards it.

That was all you agreed to contribute?—That was all I agreed to contribute.

Keep to your own account; “all the committee themselves did not know what was going forward?”—Those that were upon the committee knew what was going to be done; there were some that attended after the committee; it was not regularly termed a committee each time.

All the meetings did not know what they were going to do?—No, some did not.

You knew what was going to be done?—Yes.

But some man in a brown coat got up and said, “You suppose we all know what we are going about, but I wish to know?”—Yes.

When he said that the design being to

assassinate the cabinet ministers, Mr. Brunt said, “You must come to another room, and there you shall know?”—Yes.

And upon that, men joined you?—They followed us.

It was not the same party that were to go from Cato-street to lord Harrowby's, that were to seize the cannon in Gray's-inn-lane?—The same party that were to do the west-end job, were to go to Gray's-inn-lane.

Did not you tell us, that Mr. Cook was at the head of the party to seize the cannon?—That was at the Artillery-ground.

But not the west-end job party?—No.

Did you know where Mr. Cook's party were to come from?—No.

You never heard where his division hid themselves?—No; I have seen Mr. Cook himself.

Was Mr. Palin to fire the town with his own hand?—He and others.

Where were his men to come from?—I do not know.

You have told us about a proclamation; I suppose that proclamation received universal consent when it was read?—The three bills.

The three bills, saying, “Your tyrants are destroyed?”—Yes; I did not hear any body object to it.

It was part of the plan that those bills were to be stuck up in the streets the same night?—It was proposed by Thistlewood; it was not put from the chair; it was said by Thistlewood they were to be stuck up against the houses.

What became of them?—I cannot say; I saw them in the room, but never out of it.

Who were to stick them up?—I do not know.

I will not go through the whole of this story; but ask you, do you know a man of the name of Thomas Chambers?—I do not.

Then if you do not know him, you never of course called on a man of that name, and solicited him to join you in killing his majesty's ministers; telling him, at the same time, you would have blood and wine for supper?—I do not know that ever I was acquainted with such a man.

Will you deny this fact?—I will positively; if I were guilty of the fact I would acknowledge it; but I am not and will not acknowledge it.

On the night of the 23rd, the night you were all detected, did you and Edwards call on that man, Chambers, and desire to leave some arms with him?—I never saw Edwards after the Wednesday morning.

Then you mean to say you did not?—Yes, I will swear I did not.

That we may have no mistake about the man, the Chambers I mean lives in Heathcock-court, in the Strand?—I do not know that I could find out Heathcock-court.

You have never been in that court?—Not that I know of; I may have been in it, but I do not know it.

You have omitted some things in your evidence to-day?—I have omitted a great deal.

You stated before, that there were to be messages sent to the out-ports, to prevent any gentlemen leaving the kingdom without an order from the provisional government?—Yes.

That Brighton was to be taken possession of by a force?—Yes.

What had Brighton done?—Nothing more than the other places.

Mr. *Baron Garrow*.—You will find that connected with the circumstance of their permitting no persons to go out.

Mr. *Solicitor General*.—I have omitted many circumstances, in consequence of my desire to shorten the case.

Mr. *Curwood*.—His lordship has reminded me, very properly, of a circumstance; they were all to be plundered if they permitted any person to go out of the kingdom?—Yes.

Where was the force to come from to do this?—I cannot say, but they expected the people to come over.

As you were a leader, what were the arrangements for all this?—I had not the ambition about me to be a leader; I did not expect they would bring things to such a pitch.

What were your motives?—I have told you before; I had a reason for it, and shall not make allusion to that again.

You stand here to give us the truth, and the whole truth; what was your object?—My object was to search further into the principles of Brunt, as I stated the last time.

What had you to do with Brunt's principles?—I had a foolish and curious idea, which I call a very weak one.

A foolish and curious idea?—And very weak indeed to run myself into so much danger for that.

You wish the jury to understand, that you joined men for the purpose of assassination, firing the city, and overturning the government, because you had a foolish and curious idea, to know what were Brunt's principles; do you mean to state that to the jury?—I state to the jury, that that was my motive; that I took Brunt by the hand, and I had not been long acquainted with Brunt before I had reason to believe what I thought of Brunt was confirmed.

So because you thought something of Brunt, and you wanted to know whether it was well founded or not, you mixed with a plot to assassinate fifteen illustrious men, to fire the city, and to overturn the empire?—There was no number of men mentioned at that time.

His majesty's ministers, who amounted to fifteen?—Yes.

You state to the jury, that was your only reason for joining in this plot?—I do.

Do you know a man of the name of Whatman?—No.

You have told us, that there was a conversation in the loft at Cato-street, in which some one said to Tidd or you, I believe, "This

is a pretty business, do you think there are enough of us here to do such a job;" and he said, "No;" did not Tidd tell you he had been deceived in the business which had brought him to that loft, but finding what it was he would have nothing to do with it?—He did not say he had been deceived, but his answer to me was, "No, it never can be done."

Was that all that he said?—Yes.

Mr. *Baron Garrow*.—Prisoner Tidd, you have heard the last question put by your learned counsel, and the answer given to it; if you wish to pursue that question further, you may do so, and if you wish me to refresh your recollection by repeating to you the question to which your former interposition referred, I will do it.

Tidd.—Thank you, my lord; with respect to the last question put to him, that was the question I intended to put to him; but what I stated to him was this, when I came up to him he said, "this is a pretty piece of business," I observed to him——

Mr. *Baron Garrow*.—Before you go further, I would suggest to you, whether it may not be more prudent in you to confer with your counsel, and to put yourself in the guardianship of his discretion and judgment, rather than to put the questions yourself. You will exercise your own discretion. Do not imagine for a moment, that the Court wishes to prevent your putting any question which you may think for your advantage; the court interposes because sometimes persons put questions which they suppose may benefit them by their answer, and they do them an injury; when they have the benefit of such assistance as you have, perhaps it will be better to suggest the question to your counsel. Having stated that I am ready to take down any question you may propose.

Tidd.—I am very much obliged to you my lord.

Davidson.—I will send my question to my counsel.

Mr. *Curwood*.—With respect to Davidson, you have stated that he was not at the meeting on the 23rd?—Yes.

Was he armed when he was in Cato-street?—I do not recollect seeing him armed.

Do you remember seeing him there at all?—I do.

If he had been armed in any extraordinary way must you have noticed it?—I saw him both in the stable and up in the loft.

Had he at that time a belt round him, with a sword and pistols and musket?—I did not observe that he had any arms; I saw that he was very busy amongst them.

But you did not observe that he was armed?—I did not.

If he had been armed, must it not have attracted your attention?—Of course, if he had had them about him perceivable, I should have

sees them, but for me to say he had no arms about him, I cannot; he might have them in his pocket.

Had he a sword by his side?—I did not observe that.

Had he pistols in his belt?—I did not see them.

Or a musket in his hand?—I think I must have seen it; but when the officers entered, the arms were principally lying on the bench; if they had not, I think the consequences must have been more fatal than they were.

*Robert Adams re-examined by
Mr. Solicitor General.*

Do you remember any person ever bringing any bullets to the room?—Yes.

How many?—He stated the number to be about five hundred; this was at the room in Fox-court, on the Tuesday morning, and he had a hand-saw in his right hand.

You have been asked about the Christian religion; what was it that led you to disbelieve in the Christian religion?—The thing that led me to disbelieve the Christian religion, was the works of Paine on the Christian religion, that were put into my hands by Mr. Tidd himself.

You have been asked as to other persons; was Palin in Cato-street?—No.

Was Potter in Cato-street?—No.

Was Cook in Cato-street?—No, not to my knowledge; I did not see him there.

Did you find any of the persons to whom Palin alluded as his men?—No, I did not.

There were some persons who were to set fire to the town, of whom you knew nothing?—No; he had a party from his own mouth, that he was to call on, of whom I knew nothing.

Did you know any thing of Cook's party?—I did not.

You knew nothing either of Palin's or Cook's party; the one being to take possession of the cannon, and the other to set fire to the town?—No.

I think you say Hall was in the room at the time those proclamations were written?—Yes.

Mr. Baron Garrow.—Hall is not to be tried?

Mr. Solicitor General.—No, my lord.

*Eleanor Walker sworn.—Examined by
Mr. Gurney.*

I believe you are the niece and servant of Mrs. Rogers, of No. 4, Fox-court, Gray's-inn-lane?—Yes.

Did Brunt, who has been tried here, lodge in your house?—Yes.

Had he lodged there for many months before last January?—It would have been a twelve month this last Easter.

What rooms did he occupy?—The two front rooms on the second-floor.

In the month of January last, did he introduce any person to you to take another room?—Yes.

What room was that?—The two-pair of stairs back room.

Who was the person whom he so introduced?—Ings.

The person who has been tried?—Yes.

Did he state to you what Ings was?—No, he did not.

Was it at all mentioned what business Ings was?—No; he said perhaps he might bring his goods in in a week.

The room was unfurnished?—Yes.

The rent was three shillings a week?—Yes.

Did Ings ever bring any goods in?—Not to my knowledge.

*Mary Rogers sworn.—Examined by
Mr. Gurney.*

We have learnt from your niece, that in the month of January last, a two-pair of stairs back room was let to a person?—Yes.

Whom did that person turn out to be?—Ings, I understand.

How many weeks did that person occupy the room?—Four or five.

How many did he pay for?—Four, to the best of my knowledge; he left one unpaid.

In the course of those four weeks, did you make inquiry of Brunt as to who and what Ings was?—I did.

What did he state to you was Ings's business?—He stated that he was a butcher, and that he knew nothing more of him than seeing him in a public-house, and hearing him inquire for a lodging.

Did Ings ever bring any furniture in?—Never.

In the course of the time that he occupied it, do you recollect any evening seeing any persons go up stairs?—Yes, very well.

How many in number?—Three men.

Was there any thing remarkable in the person of either of the three?—The middle one was a black man.

[A paper was handed to the court by the prisoner Davidson.]

Mr. Baron Garrow.—Do you wish this question to be put?

Davidson.—They are pretending to know me, but I do not press the question.

Mr. Baron Garrow.—Do not deceive yourself: the question you have now handed up to be put by your counsel, is one which in its present form he would not have put, and probably would not have put at all: you would also do well to be attentive to the evidence: she has not said that she has known you; she is not asked whether you are the person, and therefore the jury and I shall not take it that she at least has proved that you were; but if your question is put, it is not at all improbable that better recollection might fix that you were.

Davidson.—I understood at first that she did speak to knowing me.

Mr. Baron Garrow.—No, she neither has done so upon this nor upon a former occasion.

Davidson.—I am obliged to your lordship.

Joseph Hale sworn.—Examined by Mr. Gurney.

Were you apprentice to the prisoner Brunt, who has been tried?—Yes.

Did you live with him at his lodgings in Fox-court?—Yes.

He occupied two rooms?—Yes.

One he occupied as a workshop, and the other as a room to live in?—Yes.

Did you sleep in the workshop?—Yes.

Do you remember a back room on the same floor being looked at by a person in January last?—Yes.

By whom?—By Ings and Brunt.

After they had looked at it together, did you hear either of them speak to the other upon the subject?—I did.

Who spoke?—Brunt spoke.

What did Brunt say to Ings?—He said "It will do; go down and give them a shilling."

Did Ings go down?—Yes.

Had you known Ings before that?—Yes.

How long?—About a fortnight before was the first time I had ever seen him.

In whose company had you seen him?—He was with Thistlewood in Brunt's workshop.

How many times had you seen him at Brunt's in the course of that fortnight?—I do not remember seeing him but twice before he took the room.

The same evening in which Brunt and Ings had looked at the room, did Ings come there?—Yes.

How did he get into the room?—He came and asked Mrs. Brunt for the key.

She had the key?—Yes.

Did she give it him?—Yes.

Did he go into the room?—Yes, he did.

Did any other persons come into that room, on that night?—Hall, the tailor, came with Ings.

Though you might not see, did you hear any other persons come into that room on that night?—Yes, I believe there were.

Your master was taken up, I believe, on Thursday the 24th of February?—Yes.

From the time that the room was taken by Ings, till your master was taken up, were any meetings of persons held in that room?—Yes.

At what time of the day do you recollect meetings to have been held?—Mostly they were held about seven o'clock in the evening.

Give me the names of persons that you have seen come to those meetings?—Thistlewood, Ings, Davidson—

By Davidson, do you mean the prisoner?—Yes; Brunt, Bradburn, Adams, Strange, Potter, Hall, Edwards.

Look at the bar, and see whether you see any other person there?—No, I do not remember seeing any other.

Do you know any person of the name of Tidd?—Yes.

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Do you know his person, or only his name?

—I know his person.

Do you see him at the bar?—Yes.

Did you ever see Tidd there?—Yes.

I did not hear you to repeat that name, but I understand you did?

Mr. Baron Garrow.—I have taken him to mention the name of Tidd.

A Juryman.—We did not hear him name him before.

Another Juryman.—I did.

Mr. Gurney.—I will put the question; did you see Tidd come to that room?—Yes.

Mr. Baron Garrow.—Thistlewood, Ings, Tidd, Hall, Davidson, Edwards, Potter, Adams, Strange, Bradburn; do you recollect any others?—No.

Mr. Gurney.—Did you know Tidd well?—I have seen him coming to Brunt's many times.

Was he of the same trade as your master?—Yes.

Did he come to your master about work?—I do not know that he did, but I have seen him at our lodgings.

Have you ever been at his lodgings?—Yes.

Where were they?—In Hole-in-the-wall-passage, Brook's-market.

On any occasion when you passed the door of that room, was it open?—Yes.

Did you see any thing in it?—Yes.

What?—I saw some long poles, like branches of trees, rough as they came from the tree.

About how many in number?—About twenty.

In the course of the time this room was used in this way, did you hear any work going on in it?—Yes.

What kind of work?—I have heard hammering and sawing.

On the Sunday before your master was taken up, was there any meeting in that room?—Yes.

At what time of the day?—In the morning.

Was it a larger or a smaller meeting than usual?—I believe it was a larger one.

Were the persons whom you have named all there?—Yes.

Are you sure, particularly, that Tidd was there?—Yes.

Are you sure Davidson was there?—Yes.

Did they all go away together, or separately?—Separately, one or two at a time.

Was your master in the room with them?—Yes.

After the meeting broke up, did any person come out of the room with your master, into your master's room?—Yes.

Who was that?—Strange.

On the Monday and on the Tuesday, were their meetings held in that room?—Yes.

On the Wednesday, was there any number of persons there?—Yes.

Do you remember any persons being there at about two o'clock?—Yes.

Who were they?—Strange, and a person whom I do not know.

Did Strange and that person come into your workshop?—Yes.

What did they do there?—They were flint-ing pistols.

How many pistols?—Five or six.

Did they finish the flinting of them, or did any thing interrupt them?—There were persons overlooking them.

Who observed that?—I do not know the man.

That stranger observed that?—Yes.

What did Brunt say upon that?—Brunt told them to go into the back-room.

Did they do so?—Yes.

In the course of that afternoon, were there several persons in the back-room?—Yes.

Did any person come out of the back-room, and ask you for any thing?—Yes.

Who did?—Thistlewood.

What did he ask you for?—A piece of writing paper.

Did you give it him?—Yes, I did.

Where did he go with it?—Into the back-room.

After that, did any other person come out of the back-room to you?—Yes.

Who?—Brunt.

What did he desire you to do?—He told me to go and get some cartridge paper.

How much?—Six sheets.

Did you go and buy it?—Yes.

Did you give it to him?—Yes.

Where did he take it to?—Into the back-room.

This was on the Wednesday?—Yes.

At about what time did your master go out?—At about six o'clock.

After this, had your mistress occasion for any thing for the purpose of making tea?—Yes, she wanted a table.

The table was ordinarily in your living room?—Yes.

To what place did she send you to get it?—To the back-room.

Did you knock at the door?—Yes.

Who opened it?—Potter opened it.

Did he give it you?—Yes, he did.

After that, did any other person call?—Yes.

Who called?—Tidd.

Did he come into Mrs. Brunt's room?—Yes.

Did she show him any thing?—Yes.

What?—She showed him a pike-head and a sword, which hung in one of the cupboards.

What did she ask him?—She asked him what she could do with them.

What did he say?—He said, if she would give them to him, he would take them away.

Did he take them?—Yes.

To what place?—To the back-room.

After that, did you hear any persons go down stairs from that room?—Yes.

After those persons were gone, did any body come into your mistress's room and speak to her?—Yes.

What message did he give her?—He said, if any persons called, she was to send them to the White Hart.

That is a public-house close by?—Yes.

Shortly after, did any persons call?—Yes.

How many?—Three.

Did your mistress direct them to the White Hart?—Yes.

Did they know the way?—No.

What was done to show them the way?—I went and shewed them the way.

Upon your return, did you find any other persons?—When I came to the door, I was there two or three minutes, and Potter came up.

Did you direct him to the White Hart also?—Yes.

Were there any persons with him?—Yes.

Did you go to the White Hart to show him the way?—No.

Why did you not?—He appeared to me to know the way.

At about what time did your master come home?—At about nine o'clock.

Were the tail of his great coat, and his boots in the same condition as when he went out?—No.

In what condition were they?—They were very muddy.

Did you hear what he said to his wife when he came in?—Yes.

What did he say?—He said it was all up, or words to that effect.

Did he appear composed or otherwise?—He appeared confused.

What more did he say?—He said he had saved his life, and that was all.

Did he say what had happened to put his life in danger?—Yes; he said where he had been a lot of officers had come in.

Just after he had said that, did any other person come in?—Yes.

Was that person known to you, or a stranger to you?—I do not know who it is.

How did Brunt receive him?—He shook hands with him, and asked him if he knew who had informed.

Mr. *Baron Garrow*.—Try to give us the very words.—He shook hands with him, and said, "Do you know who has informed him."

Mr. *Gurney*.—Can you remember the first words he used when he came in?—Those were the words to the best of my recollection.

What did the stranger say?—He said, no, he did not.

From the manner of their speaking to each other, did it appear to you that they had been together?—Yes.

What more did the stranger say?—He said he had had a dreadful blow on the side, and was knocked down.

Mr. *Baron Garrow*.—That you understood to be speaking to the same transaction of which your master had been speaking?—Yes.

Mr. *Gurney*.—After that, did your master say any thing?—Yes; he said, "there is something to be done yet."

After saying that, what did he and the stranger do?—They both went away together.

After they were gone, did Mrs. Brunt and you go into the back room?—Yes.

What did you see there?—I saw in some of the cupboards a lot of rolls of brown paper, with tar in them, and four large balls, made of string tarred, as big as my two fists.

What do you now understand them to be?—I have heard since that they are hand-grenades.

Any thing else?—Yes, some flannel bags; two of them were full of something.

The others were empty?—Yes; and some cartridge paper.

Was there any iron pot?—Yes.

To whom did that pot belong?—Brunt.

Did your mistress take the things out, or leave them in the cupboard?—Left them in the cupboard.

At what time did your master come home?—At about eleven o'clock.

Before he went to bed did he give you any instructions for the next morning?—Yes, he told me to get up as soon as I could, and clean his boots.

Did you get up soon in the morning, and clean his boots?—Yes, I did.

After that, did he make any inquiry of you?—Yes.

What was that?—He asked me if I knew the Borough, I told him yes.

Did he ask you whether you knew any place in the Borough?—He asked me if I knew Snow's fields; I told him, no.

Did he then tell you where to go to?—Yes, to go to Kirby-street Snow's fields.

To whose house?—To the house of a man of the name of Potter.

Did he tell you what you were to take?—He said I was to take the things that were in the back room.

Did he and you go together into the back room?—Yes.

What did you take with you?—We took two rush baskets.

What did he direct you to put into those baskets?—The things that were in the cupboard.

Those things you had seen the night before?—Yes.

Did you do so?—Yes.

After that, was any thing done with respect to either of the baskets?—Yes, one of them was tied up in a blue apron belonging to Mrs. Brunt.

What use had been made of that blue apron for some time before?—It had been used as a curtain to the window of the back room.

Was the other basket tied up in any thing?—No.

Did your master go into his own room?—Yes.

What happened at that time?—While we were there looking for something to tie the other basket in, two officers came in.

Did they take your master into custody?—Yes.

They took possession of the two baskets containing those things, and the iron pot?—Yes.

Joseph Hale cross-examined by
Mr. Curwood.

Do you know a man of the name of Dwyer?—No.

You say you do know Edwards?—Yes.

And Adams?—Yes.

They were frequently there?—Yes.

Were you near enough to hear their voices when they spoke?—No.

Mr. Gurney.—Will you forgive me asking one question? You have mentioned Thistlewood as one of the persons who used to come?—Yes.

By what name did the others use to address him?—Sometimes T. and sometimes Arthur.

Did you hear the other persons call each other by their names?—Yes.

Mr. Curwood.—I dare say you have heard the man called by his Christian name many times, have not you?—Yes.

And sometimes by the first letter of his name?—Yes; and sometimes by his name, Thistlewood.

You say Adams and Edwards were frequently there?—Yes.

More frequently than the other people do you think?—Edwards was there oftener than Adams, but Adams used sometimes to come up.

Thomas Smart sworn.—Examined by
Mr. Littledale.

Are you a watchman?—Yes.

Were you at watch on the night of the 22nd of February last, in Grosvenor-square?—I was.

Did you see any men there who particularly attracted your notice?—I saw four.

What time of night was it?—It was about half-past eight, or a quarter before nine, at the furthest; after I had called half-past eight.

What were they doing?—They were looking through the palisades; they stood at the corner when I went up to them.

Where was that?—It was at Mr. Maberly's house they were at that time; they were looking about, and I went up to see what they wanted.

Did you say any thing to them?—They asked me what o'clock it was, and I told them it was near nine.

Did you observe any thing about the appearance of any of them?—I thought they were very suspicious characters; one of them had a stick.

Was one of them a dark man?—Yes; a man of colour.

Do you know whether Bissix was a watchman there?—Yes, I called Bissix to make observation, telling him I saw some suspicious characters.

Who were they?—Strange, and a person whom I do not know.

Did Strange and that person come into your workshop?—Yes.

What did they do there?—They were flinting pistols.

How many pistols?—Five or six.

Did they finish the flinting of them, or did any thing interrupt them?—There were persons overlooking them.

Who observed that?—I do not know the man.

That stranger observed that?—Yes.

What did Brunt say upon that?—Brunt told them to go into the back-room.

Did they do so?—Yes.

In the course of that afternoon, were there several persons in the back-room?—Yes.

Did any person come out of the back-room, and ask you for any thing?—Yes.

Who did?—Thistlewood.

What did he ask you for?—A piece of writing paper.

Did you give it him?—Yes, I did.

Where did he go with it?—Into the back-room.

After that, did any other person come out of the back-room to you?—Yes.

Who?—Brunt.

What did he desire you to do?—He told me to go and get some cartridge paper.

How much?—Six sheets.

Did you go and buy it?—Yes.

Did you give it to him?—Yes.

Where did he take it to?—Into the back-room.

This was on the Wednesday?—Yes.

At about what time did your master go out?—At about six o'clock.

After this, had your mistress occasion for any thing for the purpose of making tea?—Yes, she wanted a table.

The table was ordinarily in your living room?—Yes.

To what place did she send you to get it?—To the back-room.

Did you knock at the door?—Yes.

Who opened it?—Potter opened it.

Did he give it you?—Yes, he did.

After that, did any other person call?—Yes.

Who called?—Tidd.

Did he come into Mrs. Brunt's room?—Yes.

Did she show him any thing?—Yes.

What?—She showed him a pike-head and a sword, which hung in one of the cupboards.

What did she ask him?—She asked him what she could do with them.

What did he say?—He said, if she would give them to him, he would take them away.

Did he take them?—Yes.

To what place?—To the back-room.

After that, did you hear any persons go down stairs from that room?—Yes.

After those persons were gone, did any body come into your mistress's room and speak to her?—Yes.

What message did he give her?—He said, if any persons called, she was to send them to the White Hart.

That is a public-house close by?—Yes.

Shortly after, did any persons call?—Yes.

How many?—Three.

Did your mistress direct them to the White Hart?—Yes.

Did they know the way?—No.

What was done to show them the way?—I went and shewed them the way.

Upon your return, did you find any other persons?—When I came to the door, I was there two or three minutes, and Potter came up.

Did you direct him to the White Hart also?—Yes.

Were there any persons with him?—Yes.

Did you go to the White Hart to shew him the way?—No.

Why did you not?—He appeared to me to know the way.

At about what time did your master come home?—At about nine o'clock.

Were the tail of his great coat, and his boots in the same condition as when he went out?—No.

In what condition were they?—They were very muddy.

Did you hear what he said to his wife when he came in?—Yes.

What did he say?—He said it was all up, or words to that effect.

Did he appear composed or otherwise?—He appeared confused.

What more did he say?—He said he had saved his life, and that was all.

Did he say what had happened to put his life in danger?—Yes; he said where he had been a lot of officers had come in.

Just after he had said that, did any other person come in?—Yes.

Was that person known to you, or a stranger to you?—I do not know who it is.

How did Brunt receive him?—He shook hands with him, and asked him if he knew who had informed.

Mr. *Baron Garrow*.—Try to give us the very words.—He shook hands with him, and said, "Do you know who has informed him."

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What did the stranger say?—He said, no, he did not.

From the manner of their speaking to each other, did it appear to you that they had been together?—Yes.

What more did the stranger say?—He said he had had a dreadful blow on the side, and was knocked down.

Mr. *Baron Garrow*.—That you understood to be speaking to the same transaction of which your master had been speaking?—Yes.

Mr. *Gurney*.—After that, did your master say any thing?—Yes; he said, "there is something to be done yet."

After saying that, what did he and the stranger do?—They both went away together.

After they were gone, did Mrs. Brunt and you go into the back room?—Yes.

What did you see there?—I saw in some of the cupboards a lot of rolls of brown paper, with tar in them, and four large balls, made of string tarred, as big as my two fists.

What do you now understand them to be?—I have heard since that they are hand-grenades.

Any thing else?—Yes, some flannel bags; two of them were full of something.

The others were empty?—Yes; and some cartridge paper.

Was there any iron pot?—Yes.

To whom did that pot belong?—Brunt.

Did your mistress take the things out, or leave them in the cupboard?—Left them in the cupboard.

At what time did your master come home?—At about eleven o'clock.

Before he went to bed did he give you any instructions for the next morning?—Yes, he told me to get up as soon as I could, and clean his boots.

Did you get up soon in the morning, and clean his boots?—Yes, I did.

After that, did he make any inquiry of you?—Yes.

What was that?—He asked me if I knew the Borough, I told him yes.

Did he ask you whether you knew any place in the Borough?—He asked me if I knew Snow's fields; I told him, no.

Did he then tell you where to go to?—Yes, to go to Kirby-street Snow's fields.

To whose house?—To the house of a man of the name of Potter.

Did he tell you what you were to take?—He said I was to take the things that were in the back room.

Did he and you go together into the back room?—Yes.

What did you take with you?—We took two rush baskets.

What did he direct you to put into those baskets?—The things that were in the cupboard.

Those things you had seen the night before?—Yes.

Did you do so?—Yes.

After that, was any thing done with respect to either of the baskets?—Yes, one of them was tied up in a blue apron belonging to Mrs. Brunt.

What use had been made of that blue apron for some time before?—It had been used as a curtain to the window of the back room.

Was the other basket tied up in any thing?—No.

Did your master go into his own room?—Yes.

What happened at that time?—While we were there looking for something to tie the other basket in, two officers came in.

Did they take your master into custody?—Yes.

They took possession of the two baskets containing those things, and the iron pot?—Yes.

Joseph Hale cross-examined by
Mr. Curwood.

Do you know a man of the name of Dwyer?—No.

You say you do know Edwards?—Yes.

And Adams?—Yes.

They were frequently there?—Yes.

Were you near enough to hear their voices when they spoke?—No.

Mr. Gurney.—Will you forgive me asking one question? You have mentioned Thistlewood as one of the persons who used to come?—Yes.

By what name did the others use to address him?—Sometimes *T.* and sometimes *Arthur*.

Did you hear the other persons call each other by their names?—Yes.

Mr. Curwood.—I dare say you have heard the man called by his Christian name many times, have not you?—Yes.

And sometimes by the first letter of his name?—Yes; and sometimes by his name, Thistlewood.

You say Adams and Edwards were frequently there?—Yes.

More frequently than the other people do you think?—Edwards was there oftener than Adams, but Adams used sometimes to come up.

Thomas Smart sworn.—Examined by
Mr. Littledale.

Are you a watchman?—Yes.

Were you at watch on the night of the 22nd of February last, in Grosvenor-square?—I was.

Did you see any men there who particularly attracted your notice?—I saw four.

What time of night was it?—It was about half-past eight, or a quarter before nine, at the furthest; after I had called half-past eight.

What were they doing?—They were looking through the palisades; they stood at the corner when I went up to them.

Where was that?—It was at Mr. Maberly's house they were at that time; they were looking about, and I went up to see what they wanted.

Did you say any thing to them?—They asked me what o'clock it was, and I told them it was near nine.

Did you observe any thing about the appearance of any of them?—I thought they were very suspicious characters; one of them had a stick.

Was one of them a dark man?—Yes; a man of colour.

Do you know whether Bissix was a watchman there?—Yes, I called Bissix to make observation, telling him I saw some suspicious characters.

Charles Bissix sworn.—Examined by
Mr. *Littledale*.

Are you a watchman?—Yes.

Were you in Grosvenor square on your duty on the night of the 22nd of February?—I was.

Was Smart there at the same time?—Yes, he was.

Did you see any men in the square who attracted your notice?—Yes.

How many?—Two.

What were they doing?—They passed us and asked what time it was; we told them it was near nine o'clock, and they passed along and took particular notice of some of the houses in the square, particularly Mr. Maberly's and lord Harrowby's; and one of them, the man of colour, had a stick in his hand, rather larger than is carried by persons in general.

They appeared to be looking particularly at the houses?—Yes, they were watching the houses.

Henry Gillan sworn.—Examined by
Mr. *Bolland*.

You live at No. 15, Mount-street, Berkeley-square?—Yes.

Do you ever frequent the Rising Sun public-house?—I go there sometimes.

Did you happen to be there on the 22nd of February last?—Yes.

How is the house situate?—The corner of Adams-mews and Charles-street.

What time of the day or evening were you there?—Between nine and ten o'clock.

While you were there, did either of the prisoners at the bar come in?—No, neither of those; Adams and Brunt were the men that came in.

Had they any refreshment?—Yes; some bread and cheese, and some porter.

Did you play at any game with either of them?—I played two games at dominos with them.

With which of them?—With Brunt.

At what time did you leave the house?—At near ten o'clock.

Did you leave Adams and Brunt there?—Yes.

John Hector Morison sworn.—Examined by
Mr. *Bolland*.

Are you journeyman to Mr. Henry Thomas Underwood, of No. 74, Drury-lane?—Yes.

He is a cutler?—Yes.

Do you know a man of the name of Ings?—Not before he brought a sword.

You now know that man who has been tried here?—Yes.

Did Ings bring you any thing in the way of trade to do?—He brought me a sword to grind, on Christmas Eve.

Did he give you any directions respecting it?—To be ground sharp, from the heel to the point, and likewise the back to be ground.

Was that done for him?—Yes.

Who fetched away the sword?—He did himself.

Did he afterwards employ you to do any thing?—Yes; a fortnight afterwards he brought me another to be ground as the first was.

Was that done also, and delivered to him?—Yes.

Edward Simpson sworn.—Examined by
Mr. *Bolland*.

You are corporal major of the second regiment of life-guards?—Yes.

Do you know the prisoner Harrison?—Yes, perfectly well.

Was he ever in your regiment, and how long?—He was; I cannot state the exact time; but he was in, to my knowledge, for five years and upwards.

Did his regimental duty make him acquainted with the King-street barracks?—Yes.

Were there any windows in those barracks looking into Grosvenor-mews?—No, Gloucester-mews; five windows looking out of the loft.

I believe they are stopped up?—Yes, they are.

How long have they been stopped up?—They were stopped up some two or three days after the affair in Cato-street.

What did the lofts contain?—Hay and straw chiefly.

Was it possible for a person, by throwing any thing in at either of those windows, to produce a fire?—At one window particularly, opposite where the straw was lodged.

Mr. *Baron Garrow*.—What quantity of straw do you think was in that situation at that time?—Two or three loads, I suppose, at the least.

In a situation which might have been reached by a fire-ball going in at the window?—Yes, most undoubtedly; perhaps it was not situated above four feet from the window.

James Aldous sworn.—Examined by
Mr. *Bolland*.

You are a pawnbroker, I believe?—I am.

Do you know the prisoner Davidson?—I do.

How long have you known him?—Two or three years.

Did he, at any time, pawn with you a blunderbuss, and of what description?—A brass-barrelled blunderbuss.

Did he take it out of pawn; and if so, when?—On the 23rd of February, that morning.

Have you seen that instrument since?—Yes, I have.

In the custody of the officers of Bow-street?—Of Mr. Ruthven.

Mr. *Baron Garrow*.—Is that the same that was pointed out to you here?—It was shown to me, but not in this court.

But you have seen it in the possession of Ruthven?—I have.

John Monument sworn.—Examined by
Mr. Solicitor General.

You are at present in custody at the Tower?
—Yes.

You are brought here in custody?—Yes.

What are you by trade?—A shoemaker.

Where do you live?—At No. 8, Garden-court, Baldwin's-gardens.

Is that near Brook's-market?—Yes.

Do you know a person of the name of Ford?
—Yes.

Do you remember seeing Thistlewood at any time at Ford's?—Yes.

As nearly as you can recollect, how long ago is that?—Nearly three months before I was taken up.

Nearly three months before the 23rd of February?—Yes.

In consequence of seeing Thistlewood at Ford's did Thistlewood afterwards call upon you?—Yes.

How long was it after you had seen him at Ford's, that he called upon you?—I believe about a fortnight, or three weeks.

At the time when he called upon you, did he call alone, or was any person in company with him?—Brunt was with him.

Was any person in the room with you, when he called?—Yes, my brother and my mother.

After he had been in the room some short time, did he say any thing to you?—Yes; he said he wished to speak to me.

Did you, in consequence of that intimation, go out of the room with him?—Yes.

Leaving your brother and Brunt in the room?—Yes.

What is your brother's name?—Thomas Monument.

What did Thistlewood say to you, when he got out of the room?—He said, great events were at hand, the people were everywhere anxious for a change, that he had been promised support by a great many who had deceived him, but that now he had got men who would stand by him; he asked me whether I had any arms; I said, "No;" he said, "every man should have arms;" he said, all that belonged to them had arms, or "all of us have arms," to that effect; he said "some have got a sabre, some have got a pistol, and some have got a pike, every one have got something;" he said, I might buy a pistol for about four or five shillings; I told him I had got no money to buy pistols; he said well, he would see what he could do.

After you had had that conversation, do you remember any thing more that passed at that time?—He said, the man he brought with him was a person in the same line, and that he lived in a court in Gray's-inn-lane.

That he was in the same line of what?—In the same line of business.

Brunt was a boot-closer, I believe?—Yes, he was.

Did you, after this conversation, return into the room, where your brother and Brunt were?
—Yes.

Did Thistlewood and Brunt shortly after go away?—Yes, I lighted them down stairs; and in the passage, Brunt told me his name, and that he lived at No. 4, in Fox-court, Gray's-inn-lane.

Do you recollect, on Tuesday the 22nd of February, Brunt calling upon you?—Yes.

Was your brother then present?—Yes.

Did Brunt call alone, or was he in company with any person?—In company with Tidd.

Tidd the prisoner?—Yes.

What did you say to him, on his coming into the room?—I said to Brunt, "I thought I had lost you;" he said, the king's death had made an alteration in their plans.

What did you say to that?—I asked him what plans; he said there was to be a meeting the following evening, up at Tyburn-turnpike, where I should hear all about it.

Upon his saying that, what further passed?—He then looked to Tidd, and asked him, whether he should give me the name.

What did Tidd say?—Tidd said, Yes, he supposed there was no danger; upon which Brunt said, when I got there, if I saw any people about, I was to say *b, u, t*, and if they were friends they would answer *t, o, n*; he said he should be at our house the following morning, to tell me all about it, and at what time it was to take place.

Was that all that took place at that meeting, as far as you remember?—Yes.

Upon that, did Tidd and Brunt go away together, leaving your brother in the room?—Yes.

The next day did he call?—Yes.

Was he alone or in company with any person?—Alone.

At what time did he call?—About half-past four in the afternoon.

What did he say?—He called me down stairs.

Was your brother with you?—Yes; he said he wanted me to go in half an hour; I told him I could not, for that I had some work to finish, which must be done before I could go; he asked me what time it would be done; I said, about six o'clock; he said, he could not wait so long as that, but that I must go with the man that he brought with him the day before.

Did he tell you the name of that man?—Yes; that his name was Tidd, and that he lived at Hole-in-the-wall-passage, Brook's-market.

Did you promise to go?—I do not know that I said positively that I should go.

But you gave him reason to suppose you should?—Yes.

Did you go that evening to Tidd's lodging in Brook's-market?—Yes, at about half-past six.

Did you find Tidd at home?—Yes.

What did he say on your entering the room?—He said he was waiting for some more men that were to go with him; and that if there were no one else came before seven o'clock, he would not wait any longer.

Did any person arrive before seven o'clock?—No.

What did he do?—I asked him where it was we were going to; he said, at a mews in Edgware-road; he went to a box at a corner of the room, and took out a pistol, which he put into a belt which was round his body.

What else did he take?—About six or eight pike-heads wrapped up in brown paper.

Did you look at those pike-heads particularly?—No, I did not examine them.

You did not see whether they were bayonets or files?—They appeared to be three square like bayonets; then he took a staff of about four feet long, with a hole at the end, as if to put a pike in.

After he had thus provided himself, did you go out together?—Yes.

You went down into Holborn, and from thence into Oxford-street?—Yes.

While you were going along, what passed between you?—I asked him what we were going about; and he said, I should know when we got there; I then asked him, whether we were going to the House of Commons; he said, no; there were too many soldiers near there; I asked him again where we were going to, he said to Grosvenor-square; I asked him, whether any one in particular lived there; and he said there was to be a cabinet dinner there that evening.

Upon his saying that, did you understand what was intended?—Yes; I did not ask him any more.

Did you go on with him towards Edgware-road?—Yes.

Did you come to an archway that leads into a narrow street?—Yes.

When you got under that archway, did you find any persons there?—Yes, two men.

Did any conversation pass?—Tidd was before me; he spoke to them, I believe a few words, and then we entered into a stable.

Did you find any persons there?—Yes, three or four men.

At the further extremity of that stable there was a ladder?—Yes.

Did you go up that ladder?—Yes, I went up after Tidd.

Did you find any persons in the loft above?—Yes; about three or four-and-twenty persons.

Did you see any thing like a carpenter's bench?—Yes.

With what was that covered?—Swords and pistols.

Was Thistlewood among the persons whom you found there?—Yes.

Can you tell us what passed in the room after you got there?—There was a man in a brown great coat sitting on the other side of the carpenter's bench, who spoke of the impropriety of going to lord Harrowby's with so small a number as five-and-twenty men.

Had the number been mentioned before?—Yes; some person was going to count them, and Thistlewood said there was no occasion, there were five-and-twenty.

Look at the prisoner Davidson; did you see him there that evening?—Yes.

Did he come into the loft after you, or did you find him there?—I do not think he was in when I first went in, but he came in afterwards.

Had you ever seen him before?—At one or two meetings in Smithfield.

So that you knew his person?—Yes.

Mr. Baron Garrow.—What do you mean by meetings in Smithfield?—Public meetings.

Are you sure of his person?—Yes.

Had he taken any prominent part in those meetings, so as to give you an opportunity of observing his person?—No, I never heard him speak.

But you have no doubt of his person?—No.

Mr. Solicitor General.—Did you the following day, or soon afterwards, see him at Whitehall?—I saw him not the following day, for we were put in separate rooms; but the day we were taken to the Tower, and the day before that, we were all put into a room together.

Mr. Baron Garrow.—You say that this person remarked on the impropriety of going to lord Harrowby's with so small a number; did he mention lord Harrowby's name?—Yes, I think he did.

Mr. Solicitor General.—Repeat what passed?—On his saying this, Thistlewood said he only wanted fourteen men to go into the room; and, supposing lord Harrowby had sixteen men servants, that number would be quite sufficient: upon which the man in the brown coat said, "when we come out of the room, of course there will be a crowd round the door—how are we to get away?" Thistlewood said, "you know the largest party are already gone;" upon which Davidson told the man in the brown great coat not to throw cold water upon their proceedings.

Was the Davidson you speak of the prisoner at the bar?—Yes; for if he was afraid of his life, he might go, they would do without him; and Brunt said, that sooner than they should go from the business they were going to do, he would go into the room by himself, and blow it all up, if he perished with them; and he said, "you know we have got that that can do it."

After this conversation had taken place, were any parties separated from the rest to go into the room?—Yes.

Mr. Baron Garrow.—Did the man in the great coat make any answer to that?—Yes; he said as they all seemed for it, though he did not like going with so small a number, he would not be against it; and he proposed that they should all put themselves under the orders of Thistlewood; upon which Thistlewood said, that every one engaged in that business would have the same honour as himself.

Mr. Solicitor General.—After that conversation had taken place, were the persons who were to go into the room separated from the others?—Yes; Thistlewood then proposed that the fourteen men to go into the room should volunteer from the persons then assembled, and that those who so volunteered should place themselves at one side of the room.

Upon that proposition being made, did any of them separate themselves for that purpose?—Yes, about twelve or thirteen.

Can you tell us the names of any of them; you do not know the names of many of the party?—No.

State any within your knowledge?—Tidd, Brunt, Davidson and Wilson; that is all that I recollect.

While this was going on, did any alarm take place below?—I did not hear any; Thistlewood went down stairs and came up again, and said, he had just received intelligence that the duke of Wellington and lord Sidmouth, had just arrived at lord Harrowby's.

Shortly after that, did any alarm take place below?—I did not hear any alarm till I perceived the men at the top of the stairs; they said they were officers, and bade them surrender.

I will not ask as to what passed, because we will have that from other persons; you were taken into custody yourself?—Yes.

Smithers was killed?—I did not know it was him till afterwards; there was a man killed.

You were examined at Whitehall?—Yes.

On one of those occasions, were you handcuffed to Thistlewood?—Yes, both the last times I went.

State what Thistlewood said to you?—He said, if I was asked who led me into that business and took me to the meetings, that I was to say it was a man of the name of Edwards.

What did you answer to that?—I said, "How can I tell that falsehood, when you know I never saw the man;" he said that was of no consequence; if I was asked what sort of a man he was, I was to say that he was not much [taller than myself, of a sallow complexion, and dressed in a brown great coat.

John Monument cross-examined by **Mr. Curwood.**

You had joined in this plan to assassinate his majesty's ministers?—Unwillingly.

You did join it?—Through fear.

How through fear?—I was afraid if I did not join it, it would be the worse for me; for when Brunt came on the 22nd of February, he said, that any one that was any ways concerned with them, and did not go, would be destroyed.

Therefore you having been concerned with them—No more than what I have stated.

Had you been concerned with them before?—No.

Have you told us all that you know to-day?—Yes; all I can recollect.

You do not know any thing of any other schemes or plans?—No.

You know nothing about a proclamation?—No.

You know nothing of a plan to raise rebellion, and levy war?—No.

All you know is about a plan to assassinate his majesty's ministers?—Yes.

Mr. Baron Garrow.—Is not that examination into the legal consequences?

Mr. Solicitor General.—I understand you to say, you have told us all you know?—Yes.

Mr. Curwood.—I will ask one question more if you please: did not Tidd, when you were in the loft, tell you he had been deceived, and persuade you to go away with him and leave the party?—No, he did not; I wish for his own sake as well as mine, that he had.

Thomas Monument sworn.—Examined by **Mr. Solicitor General.**

You are brother to the last witness?—Yes.

Are you a shoemaker?—Yes, I am.

Do you live with your brother?—Yes.

Do you remember Thistlewood calling upon your brother at his lodgings?—Yes.

Did Thistlewood call alone?—No, he was accompanied by Brunt.

Do you remember Thistlewood going out to have some conversation with your brother?—Yes, he asked my brother if he could speak with him.

Upon Thistlewood asking your brother if he could speak with him, did they go out of the room together?—Yes.

Did they remain absent for a short time?—Yes, three or four minutes.

Did Thistlewood and Brunt go away together?—Yes.

Do you remember, on Tuesday the 22nd of February, Brunt calling upon your brother?—Yes.

Alone, or in company with any person?—In company with Tidd the prisoner.

What passed when they came in?—My brother said, "I thought I had lost you."

What did Brunt say in answer to that?—Something was said concerning the king's death; it was said, that had made an alteration in their plans.

What did your brother answer to that?—My brother asked him what plans; he said they had different objects in view.

What then took place?—Brunt asked Tidd if they should give us an outline of the plan, but I do not know whether Tidd made any answer; I did not hear any answer. Brunt said we were to meet the following evening at six o'clock, at Tyburn-turnpike, and he then gave us the pass-word.

What was it?—That we were to use the letters *b, u, t*, and if any of their party were there they would answer *t, o, n*, and then we should know them.

Did any thing more pass?—No.

Did Brunt say any thing about calling the next day?—No, he did not, but he came the next afternoon, between four and five o'clock; my brother could not go with him, for he had work to finish; then Brunt said, you must call on Tidd in Hole-in-the-wall passage, and he will take you.

Did your brother go, and if so at what hour?—I believe it was near seven o'clock; I did not see him afterwards.

You did not go yourself?—No, I did not.

Thomas Hiden sworn.—Examined by
Mr. Gurney.

Have you carried on the business of a cow-keeper and dairyman in Manchester-mews?—I have.

You have now the misfortune, I believe, to be in prison for debt?—I have.

How long have you been so?—I have been in a week ago last Saturday morning.

Do you know the prisoner, Wilson?—Yes, I do, perfectly well.

A few days before the 22nd of February, did he make any proposition to you?—He did.

What proposition did he make to you?—He met me, and asked me if I would make one of a party.

For what?—To destroy all his majesty's ministers.

Where?—At a cabinet dinner; that they were waiting for a cabinet dinner.

Did he say whether they had provided any thing for the purpose?—He said they had got every thing ready, and were waiting for a cabinet dinner.

Did he describe what sort of things they had ready?—He told me they had got such sort of things as I never saw; that they were covered with tarpaulin, and bound round with cords, filled full of nails and other things, and that they had got some made of tin, which were very strong indeed.

Did he say what those things would do?—He said, the strength of them is such, that if they were set fire to, and put under the walls of the houses in the street where we were walking, they would lift them up.

Mr. *Baron Garrow*.—Did he state how they were to be used?—That they were to be lighted with a fuse, and put into the room where the gentlemen were at dinner; and all that escaped the explosion, were to die by the edge of the sword, or some other weapon.

Did he mention any thing to be done with any persons' houses?—He told me after that, that they were going to light up lights to set fire to some houses.

Whose houses did he mention?—He said, they were to burn down lord Harrowby's, lord Castlereagh's, the duke of Wellington's, and lord Sidmouth's and the bishop of London's, and one other that I do not recollect, and by that means it would keep the town in a state of confusion for a few days, and it would become general.

What answer did you give him to this

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Did you tell him you would be one?—I did; I told him I would be one; I had a reason in so doing.

After you had told him that, did you write any letter to lord Castlereagh?—I did.

Did you go to lord Castlereagh's house?—I did.

Did you get access to his lordship?—I did not; I went two or three times.

After that, to whom did you get access?—I saw lord Harrowby.

Did you follow him?—I did, to the park; and there I spoke to him.

Did you give him the letter you wrote to lord Castlereagh?—I did.

Is that the letter [*showing a letter to the witness*] which you gave to lord Harrowby?—It is the very letter.

Did you the next day see his lordship again in Hyde-park?—Yes, I did, by appointment.

On the next day, Wednesday, did you see Wilson again?—I again saw him on the 23rd.

That was the day of the Cato-street business?—Yes.

At what time of the day?—I believe between four and five o'clock in the afternoon.

What did he then say to you?—He met me as I was walking up Manchester-street with one of my little girls; he said, "Hiden, you are the very man I want to see;" I said, "what is there going to be;" he said, "there is to be a cabinet dinner at lord Harrowby's, in Grosvenor square." I asked him where I was to meet them; he said, I was to come up to the Horse and Groom, in John-street, the corner of Cato-street, and there I was to go into the public-house, or to stop at the corner till I was shoved into a stable close by. I was to meet them at a quarter before six, or six o'clock. I asked him, if that was all that was going to be; he told me that there were to be four parties, one in Cato-street, another in Gray's-inn-lane, one in the City, or in Gee's-court, I am not certain which.

Where was the fourth to be?—There was to be one in the Borough.

Did he say any thing more about Gee's-court?—He said, I had no occasion to be alarmed, for all Gee's-court was in it.

By whom is Gee's-court inhabited?—I believe it to be generally inhabited mostly by Irishmen.

Did he say any thing more about Irishmen?—He told me that the Irishmen were all in it, but they would not act till the Englishmen began first, as the English had so many times deceived them.

Did he say any thing about yourself?—He told me that there were two pieces of cannon in Gray's-inn-lane, that were easily got at by breaking in a small door.

Mr. Baron Garrow.—Did he say what particular business was to be done by your party?—He told me, that our particular party was to go to lord Harrowby's, in Grosvenor-square; and that they there were to do the grand thing, to destroy all his majesty's ministers.

Mr. Gurney.—You say, that he told you there were some cannon in Gray's-inn-lane, that could be got by knocking in a small door?—Yes; and that there were four more pieces of cannon in an Artillery-ground somewhere, but I do not know where; and that they could easily be got, by killing a sentinel.

Did he say where they were to go, after they had done that which they intended in Grosvenor-square?—He said, after the grand thing was done, all parties were to meet somewhere in the neighbourhood of the Mansion-house.

Did he say any thing more to you?—He told me I was to be sure to come, or the grand thing would be over before I came.

Did you go to John-street that evening?—I did.

At what time?—Between six and seven o'clock; but I believe it to be near seven when I got there.

When you got there, whom did you see?—When I came into John-street, by the corner of the post by Cato-street, I saw Mr. Wilson and Mr. Davidson.

By Davidson, do you mean the man at the bar?—Yes, I do; the coloured man.

Had you known Davidson before?—Yes, a long while before.

What did either of them say when you came?—Mr. Davidson said, "you are come;" I said, I was come, but I am behind my time; he asked me then if I was going in; he said, Mr. Thistlewood was there; I told him I could not go in, as I had some cream to get, and must go and get it, if possible.

You left them, and did not go again?—I left them, and did not go again.

Did you ask him what time they should go away?—Yes; and he told me they should go about eight o'clock, and if they were gone, I was to follow them down to Grosvenor-square; the fourth house from the corner, on the lower side.

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His last words were, "come, you dog, come, it will be the best thing you were ever in in your life?"—Yes, they were.

And you expected a great deal of plunder, I dare say?—No, I did not expect any thing of the kind, for I never intended to go.

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Had you often seen him?—I had seen him at Mr. Clark's the tailor.

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Did not you think it a very odd address to you, an honest man, that a man should come up to you, without any introduction, "we are in a plot to assassinate his majesty's ministers, will you join us?"—No, I did not think it at all surprising, for I had seen Mr. Davidson, the black, before that, at my friend Clark's, and he said to me, as he went out, "Hiden, you do not come forward like the rest of us, to support the meetings." I said, no, I could not; and I had been denied to him by my family, because I did not wish to see him.

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That was all he told you?—He told me they had got hand-grenades, and things of that kind.

But he did not tell you of any other plots they had in hand?—He did not tell me, unless it was the cannon, and what I have stated.

It was part of the plan to murder his majes-

ty's ministers, and set the town on fire?—He stated that which I have told you.

Mr. Baron Garrow.—By those means it would keep the town in a state of confusion for a few days, and then it would become general.

Mr. Curwood.—You were too many for me the last time; you know a man of the name of Bennett?—Yes.

I asked you whether you had not invited him to attend any private radical meeting?—I never did ask him to attend a private radical meeting, and I will be on my oath to it.

Did you or did you not tell him that when he was there he might speak or not speak, just as he liked?—I do believe I did say so.

Had you never asked him to attend?

Mr. Gurney.—A radical meeting you asked him the first time?—I never said the word radical meetings of any form whatever.

Mr. Curwood.—Did you tell him he might be called upon to take up arms, and if he was called upon, he must take up arms?—I never said so to the best of my recollection.

Will you or not swear you did not?—I never will swear what I do not know, for no man living; I never recollect saying so to him in my life; I never made use of the words radical meeting to him.

Did you or not tell him that if he were called upon to take up arms, he must do it?—I never recollect saying such a word to him.

You must recollect whether you did or not?—I do not know that I did use that word to him.

Do you think you could have said that and forgotten it?—I do not know that ever I said such a thing to him; if I did know that I had said so, I never would have denied it.

Then all you mean to say is, that you might have said it, but forgotten it?—No, I do not think it possible that I did; for I did not know of it being in contemplation at the time.

Then you have not recollection enough to say you did not?—I have not.

*Thomas Hiden re-examined by
Mr. Gurney.*

You have been at a meeting called a shoemaker's club?—Yes.

How many times?—I went twice.

With whom did you go?—Mr. Clark, a tailor.

Did he live near you, or in the same house with you?—He has done, but did not at that time.

Whom did you see at those meetings?—Davidson the prisoner, and one more of the prisoners who is now at the bar.

Who is that?—Harrison.

Where was that club, called a shoemaker's club, held?—I believe the sign of the public-house was the Scotch Arms, in some court near the Strand, but I do not know any other

direction than that; it was on a Sunday evening when I was there, but I never was there but twice.

Did you at any time propose to Bennett to go with you and Clark?—Yes, I did; my friend Clark called upon me, and induced me to go, and I said, I dare say Bennett will go with my friend Clark and another person; and the other person said, "No, give the other a Newgate calendar, it will suit him much better than going."

But Bennett went with you and Clark?—Yes; that was as long ago, I may safely say, as four or five or six months.

*John Baker sworn.—Examined by
Mr. Attorney General.*

I believe you are butler to the earl of Harrowby?—I am.

Do you recollect, in the month of February last, by his directions, issuing cards of invitation to the Cabinet ministers to dine at his house?—I do.

On what day in February was it you issued those cards?—On the 18th or 19th; I rather think the 19th.

For what day?—The Wednesday following; the 23rd.

The cards of invitation were issued either on the Friday or Saturday preceding?—They were.

Do you know whether before that time, in consequence of the king's death, the cabinet dinners were suspended?—That was the first after the king's death.

Was the dinner prepared for the 23rd?—It was.

I believe the preparations went on till the dinner hour?—Yes, till after the dinner hour.

At what time, on the evening of the 23rd, was the dinner countermanded by lord Harrowby?—About eight, or it might be ten minutes after eight.

Up to that time had you and the other servants of my lord Harrowby expected the ministers to dine at lord Harrowby's house?—Yes, we expected them momentarily.

At what hour did you expect them?—Seven o'clock was the regular dinner hour, and I expected them from that time.

I believe one of the houses adjacent to lord Harrowby's is the Archbishop of York's?—Yes, it is.

Do you remember, between six and seven o'clock on that evening, observing carriages setting down or taking up?—Yes, there were carriages, I believe, taking up between six and seven o'clock.

Mr. Baron Garrow.—Gentlemen, the counsel would naturally call lord Harrowby next, but his lordship is probably engaged in some public business, which prevents his being here at the moment. His lordship will be ready, when he arrives, to prove the communication with Hiden; and that the preparations for the dinner went on as you have just heard.

Richard Munday sworn.—Examined by
Mr. *Littledale*.

Where do you live?—At No. 3, Cato-street.

Do you remember on the afternoon of the 23rd of February last, seeing any person in Cato-street?—Yes; when I came from work in the afternoon, I saw Davidson walking to and fro in the gateway.

Did you see him again?—Yes, I saw him running away after the transaction took place; but I had seen him between that lighting a candle, with another candle in his hand.

Did you see him go into the stable?—Yes, I saw him push the stable door open, and go into it; and I saw Harrison at the door at the time.

Did you observe, whether the coat of either of those men flew open?—Yes, Davidson's coat flew open, as he stooped with his hat over the candle; and I observed a cross-belt round him, and a belt down here; and I saw two pistols and a sword, I suppose, sticking out here; I thought it to be a sword that stuck out in that way.

In the course of the afternoon had you seen any sacking, or any thing put against the door?—I heard a nailing up at watering time, and I looked up and saw them nailing some sacking over the railing of the door, a kind of bread-bagging or something of that sort.

Would that prevent any person looking into the room?—I thought it was to keep the place warm, to bring some cows back being cold weather; but it would keep any persons from looking in.

Had the stable been empty for some time?—Yes, the cows were taken away before Christmas; I had not seen the door open from that time till this.

Had you seen persons go in and out?—When I passed by, I saw two go in and three come out.

Later in the evening did you observe persons?—No; after half-past six o'clock I was never out of my door.

George Caylock sworn.—Examined by
Mr. *Littledale*.

Do you live in Cato-street?—Yes.

Did you see any person in the street on the 23rd of February?—Yes, Mr. Harrison.

Had you known him before?—Yes.

Did you see him go into the stable?—Yes.

Did he tell you any thing about it?—He told me he had taken two chambers there, and was going to clean them up.

Did you see any other persons go in and out of that stable that evening?—Yes.

How many?—From twenty to five-and-twenty.

George Thomas Joseph Ruthven sworn.—Examined by Mr. *Bolland*.

You are one of the constables of Bow-street?—Yes.

Did you, in consequence of information, go

on the 23rd of February to Cato-street?—I did.

At what time did you first get there?—I did go up in the afternoon, and at six o'clock I went there again.

Did you go into the Horse and Groom?—Yes.

Did you see either of the prisoners at the bar, or the persons charged with this indictment, there?—Yes, I saw Cooper and Gilchrist there.

Had Cooper any thing with him?—Yes, he had a mop-stick or broom-stick.

Did he leave it or take it away?—He left it there.

Did either of them come back for the stick?—Gilchrist did.

Did he get the stick?—He did not, I have it.

What sort of a stick was it?—Like a hair-broom-stick, a mop-stick; and there was a place round it, as if to receive a socket.

Did you go into the stable?—I did.

At what hour?—About half-past eight, as nearly as I can tell.

Who was with you when you went? were Ellis and Smithers and others with you?—They were.

What did you observe?—I observed a man with a gun on his shoulder, and a sword by his side, with cross-belts.

Do you know who that man was?—I do not.

What did you then do?—I went up the ladder.

What did the ladder lead you to?—To a loft.

What did you observe?—A bench, with arms upon it; and I heard a clattering of arms.

How many men?—I suppose about four or five and twenty.

What did you say?—I said, "We are officers, seize their arms."

What did they do?—Thistlewood, whom I immediately saw, seized a sword, and retired to the inner room.

What did he do with that sword?—He stood fencing with it, endeavouring to keep any body away that approached him.

Did any body approach him?—Yes, Smithers.

What did Thistlewood do on his approaching?—He stabbed him.

Did Smithers fall?—Yes, he died immediately.

What happened after this?—A pistol was fired, and the lights were put out instantaneously.

By whom was that pistol fired?—I have heard since, but do not know of my own knowledge.

What was done then?—I heard a voice, from the corner where Thistlewood was, call, "Kill the b——rs; throw them down stairs." I joined in the cry, and got down with them.

Where did you go?—I got into John-street, and met the soldiers, and returned with captain Fitzclarence.

In what state was the loft when you returned?—I did not get into the loft for some time after that.

Upon your coming back to the stable door, did you observe any body?—I observed Tidd.

What was he doing?—He was endeavouring to get away from the stable-door, as it appeared to me.

Did you lay hold of him?—I did. I said to some body, "Lay hold of him;" and, as I spoke, he lifted up his arm, and then I saw a pistol: I laid hold of his right arm, I turned him round, and fell upon the dunghill, and he upon me; the soldiers came up soon afterwards. The pistol, I should mention, went off.

Mr. *Baron Garrow*.—Did it go off whilst it remained in his hand?—That I am not aware of.

Mr. *Bolland*.—Was he secured?—He was, and I conducted him into the public-house.

On taking him in, was he searched?—He was.

What was found on him?—A leathern belt round his waist, and two ball-cartridges in his pocket.

Did you remain in the public-house?—Before I had finished searching him, a man, named Bradburn, was brought in.

Did you search Bradburn?—I did.

What did you find?—I found a string twisted five or six times round his waist, and six ball-cartridges and three balls loose in his pocket.

Were there any others brought in?—Wilson, and the black, Davidson.

You did not search either of them?—No.

Did Davidson say any thing on his being brought in?—Yes; he damned and swore against any man that would not die in liberty's cause; that he gloried in it; and he sung part of the song, "Scots, wha' hae wi' Wallace bled."

Did Wilson say any thing?—Yes, he said it was all up; he did not care a damn; they might knock him on the head now.

You returned to the loft, I believe?—Yes.

Who were there?—There were some soldiers, and some of the prisoners, and one who is an evidence.

Monument?—Yes.

Did you find any arms there?—Yes.

Who were the other three, besides Monument?—Strange, Cooper, and Gilchrist.

What description of arms did you find?—I found two swords myself, and I saw some pistols found, and a gun or two; I found ten grenades in a bag, and one large one was found in my presence, by Nixon, and given to me, and two fire-balls.

Have you the custody of all these?—They are here, Taunton has the key.

Tidd.—My lord, I wish to ask him a question; if you recollect, I was the first man you took into custody?—You were.

Tidd.—On searching me, he expressed him-

self, "damn me, here is nothing here but a tobacco-box?"

Mr. *Baron Garrow*.—Was that so? that you expressed yourself on searching him, "there is nothing here but a tobacco-box?—No.

The Earl of *Harrowby* sworn.—Examined by Mr. *Attorney General*.

I believe you are one of his majesty's privy council?—I am.

And one of his ministers?—I am.

We understand, my lord, from your butler, that cards of invitation were issued by your lordship's direction, for a cabinet dinner, on the 23rd of February last?—They were issued at the close of the preceding week.

I must trouble your lordship to repeat the names of the members of the cabinet, and their respective offices?—The lord chancellor; lord Westmoreland, the lord privy seal; the earl of Liverpool, first lord of the Treasury; Mr. Vansittart, chancellor of the Exchequer; lord Castlereagh, secretary of state for the foreign department; earl Bathurst, secretary of state for the colonial department; lord Sidmouth, secretary of state for the home department; my lord Melville, first lord of the admiralty; the duke of Wellington, master general of the ordnance Mr. Canning, president of the India board; Mr. Robinson, president of the board of trade; Mr. Bragge Bathurst, chancellor of the duchy of Lancaster; Mr. Wellesley Pole, master of the Mint; and the earl of Mulgrave.

And yourself?—Yes.

Your lordship is president of the council?—I am.

Mr. *Baron Garrow*.—Fifteen in number?—Yes.

Mr. *Attorney General*.—In consequence of his late majesty's death, I believe the cabinet dinners had not been held as usual, for some time?—They had not.

I omitted to ask your lordship whether all those noblemen and gentlemen who have been mentioned are privy councillors?—They are privy councillors, and compose what is called the cabinet council.

Does your lordship remember, on the day preceding the Wednesday on which the cabinet dinner was to be had, riding in the park?—Yes.

Does your lordship remember seeing that person [*Hulen*] near Grosvenor-gate?—I was accosted by him near Grosvenor-gate.

Did he give you any letter?—He did.

Is that the letter? [*showing a letter to his lordship*.]—That is the letter.

A letter addressed to my lord Castlereagh?—It is.

Did he desire your lordship to have this communicated to my lord Castlereagh?—He told me it contained intelligence of great importance to his lordship and myself, and desired I would have it communicated to lord Castlereagh.

Did you upon that inquire his name?—He expressed a wish to have some further conversation with me; I asked him whether he had put his name and address in the letter, he said he had not. I told him, if I was to communicate with him it would be necessary I should know his name and address, and upon that he gave me a card containing his name and address.

Did you make any appointment to meet him again?—When I knew what were the contents of that letter, I made an appointment to meet him again in the park, at eleven o'clock the next morning.

Did your lordship ascertain the contents of that letter while you were with him?—I did not; the letter was produced by lord Castle-reagh at the council.

Did your lordship meet him again the following morning?—I did the next morning, in the young plantations near the Ring; I appointed that spot, because he appeared to be extremely apprehensive of being seen in my company when I met him the day before near Grosvenor-gate.

Having seen this person in the manner you stated, did the dinner take place at your lordship's?—The dinner did not take place.

The preparations went on?—They went on until the communication of a note which I wrote from lord Liverpool's house, between seven and eight o'clock; that must have reached my house about eight.

That was the first communication that your lordship gave to your servants, that it was not to take place?—It was the first.

*James Ellis sworn.—Examined by
Mr. Attorney General.*

I believe you are one of the conductors of the patrols at Bow-street?—I am.

Did you go to Cato-street on the evening of the 28rd of February last?—Yes, I did.

Did you go with Ruthven?—I did.

Did you go into the stable in Cato-street?—Yes, I did.

About what time did you arrive at the stable?—As near as I can state, about half-past eight o'clock.

On your entering the stable, did you observe any man in the stable?—I did; I saw Davidson; I believe it was Davidson.

Where did you see that man whom you believe to be Davidson?—Between the foot of the ladder and the door of the stable, about half way between.

The ladder is opposite to the door of the stable, at the further end?—Yes.

What did he appear to be doing?—He had got a carbine, or something of that kind, in his right hand, and a sword at his left side, and he appeared as if he was walking sentry.

Did you observe whether he had any belts on?—He had white belts.

Did you observe any other person in the stable?—There was another person in the further stall of the stable.

That was the stall nearest the ladder?—Yes.

Do you know who that person was?—I cannot tell; I should not know him again; I only saw that he was a shorter man, in a dark coat.

When you say, you believe the man you saw on first entering to be Davidson, did you observe him?—Yes; I took him by the collar, turned him round, and looked in his face, and saw it was a man of colour.

How soon afterwards did you see him in custody?—I took him into custody within five minutes afterwards.

Mr. Baron Garrow.—When you took him into custody, did he appear to be dressed in exactly the same way as you had observed him before?—Yes, exactly the same.

Mr. Attorney General.—Had he the belt?—Yes, he had the white cross-belts.

At the time you apprehended him, had he a carbine and a sword?—Yes, he had.

Did you go up the ladder to the loft above?—I followed Ruthven up the ladder.

What did you observe when you got into the loft?—When I got into the loft, I observed a number of people falling back to the back part of the room.

How many persons did there appear to be in the room?—I judged there might be about four or five-and-twenty altogether; I cannot speak positively.

Did you see any of them retire into a small room adjoining the loft?—There were three apparently attempting to enter the small room, and as I went up, Arthur Thistlewood brandished his sword at me, and was advancing rather towards me; I desired him to desist, or I would fire, at the same time holding up a pistol with one hand, and my staff with the other.

What did he do upon that?—Upon that he retreated back just within the door of the little room.

What happened then?—Smithers, who immediately followed me, on gaining the top of the ladder attempted to enter the little room; at that moment Thistlewood made a stab and stabbed him on or near his right breast; upon that his hands went up in that way, and he fell back, and exclaimed "Oh my God!" on that I immediately fired at Thistlewood, but without effect; Smithers staggered against me, and fell past me, a general rush and confusion took place; I was pushed on to the ladder, and pushed down the ladder.

Into the stable?—Yes; upon that I attempted to get into the door way into Cato-street; I remained in the door-way a few seconds, when two or three shots were fired in the stable, one or two of which passed me in the door-way; another was fired by a tall man, in a dark-coloured coat, by some person up in the corner of the stable; the man firing stood under the ladder; I then attempted to go outside the door, when some shots were fired from the window of the little room.

The window of the little room looked into Cato-street?—Yes.

In what direction were those shots fired from the window?—Towards the door.

That window is not directly over the door?—No, it is over the cart-house, three or four yards out of the line; I then heard a cry of “stop him;” and saw Davidson run in the direction from the stable towards Queen-street; I pursued him, and came up with him I think about seventy yards off, and took him into custody.

What happened on your getting up to him?—I caught him by the collar, and he attempted to cut at me, but I was too close to him, and Gill, another officer, came up and assisted me in disarming him; he made no resistance after I had once got hold of him.

Had he a carbine when you took him?—He had, and the cross-belts.

I believe you afterwards assisted in securing some of the other prisoners?—As soon as I had left him in the custody of others, I returned to the stable, and assisted in securing three or four more in the stable.

*James Ellis cross-examined by
Mr. Curwood.*

When you took Davidson, did you take him into the public-house?—I took him into a shop first, not a public-house at that time.

It was a chandler's shop, I believe?—Yes; he was afterwards in the public-house.

*Robert Chapman sworn.—Examined by
Mr. Solicitor General.*

You are also one of the Bow-street patrol?—Yes.

Were you appointed to go to Cato-street on the 23rd of February?—Yes.

Do you remember being at the Horse and Groom in that street?—Yes.

Who was with you?—William Lee, the constable.

Do you remember seeing any persons come into that house?—Yes; Davidson and Cooper.

Who was the third?—I cannot identify him; I believe it to be Gilchrist.

Tell us what they did, when they first observed you?—They stood observing us for some time through the rails.

They were outside?—No, under the door by the lamp.

In consequence of their observing you, did you go on?—We went away; but previous to that Cooper went past; Gilchrist, I believe it was, passed me so quickly that I could not identify him at that time; Davidson had a drab great coat on, that covered him entirely over, a very large one, a servant's coat.

You passed on to Molineux-street?—Yes.

Where did you go then?—We turned round one of the streets to Queen-street.

Did you observe them again?—Backwards and forwards, I saw persons go in; Cooper as he passed in said he should go in and have

some beer, and as they passed they looked us in the face.

As if observing who you were?—Yes.

Did you afterwards go round into Queen-street?—Yes.

Did you, when you got to the Queen-street end of Cato-street, hear the report of a pistol?—I did.

In consequence of that did you run up Cato-street?—I did.

What did you observe?—The persons were then running very fast out of the stable, and there was a firing; two armed men ran down the street, and as I had just overtaken them, I heard a piece go off; I turned round and heard somebody say, “Stop him!” I turned round, and I observed a man with his hand up, I thought to strike any person; I went up to him, and he struck at me, and I then saw it was a sword. Ellis recovered, and laid hold of him by the collar, and Ellis and I took him against the wall; he had also a carbine.

Who was that?—Davidson. He was dressed quite differently then; we took him into the chandler's shop.

Was there any thing else in his pocket?—A couple of pistol flints in his pocket.

Davidson.—My lord, I would beg to ask this witness a question.

Mr. Adolphus.—Send it over to me, and I will ask it if I think it proper.

[*The prisoner wrote down his question, and it was handed to his counsel.*]

*Robert Chapman cross-examined by
Mr. Adolphus.*

Did you go into any public-house, at all with the prisoner?—No.

Did you remain with him? was he in your custody from the time when he was taken?—Yes; till I went with him into the stable.

And he never was taken into any public-house at all?—No, not then.

Where was the carbine?—Benjamin Gill took it, and loaded it in the shop; he went and bought some powder. Gill came up and struck him on the sword hand, and took it from him.

You saw that done?—Yes.

Was not the carbine in the road, at some distance from him, when you took him?—No, I think not.

*Robert Chapman re-examined by
Mr. Solicitor General.*

You conducted him to the chandler's shop, and afterwards to the stable?—Yes, with a file of soldiers.

And afterwards you gave him up?—Yes.

Whether he was taken into the public-house or not, you cannot tell?—No; but I do not think he was.

You do not know, one way or the other?—No, I do not.

William Lee sworn.—Examined by
Mr. Gurney.

Are you a Bow-street patrol?—Yes.

On the evening of Wednesday the 23rd of February, did you go in company with Chapman?—Yes.

At about what time?—Somewhere about half-past six.

Near the sign of the Horse and Groom did you observe any persons?—I observed Davidson.

The prisoner Davidson?—Yes; and Gilchrist, Cooper, and Harrison, as well.

After you had stood there some little time, did you walk away?—Yes.

Did any person follow you?—Thistlewood followed us, and spoke to us.

In what way?—At least I spoke to him first; he came and stared us in the face, and I said it was very rude to stare us in the face; Chapman said, "I suppose the gentleman thinks he knows us." Thistlewood returned for answer, "Oh, it is a mistake;" and turned on his heel towards Cato-street.

You and Chapman had been sent first I believe, as officers less known?—Yes.

After walking away some little time, did you return and look at the stable?—I went round and came into Cato-street, and then I saw Davidson leave the stable, and come to the corner; at that time Gilchrist and Cooper were under the gateway. I will not be sure of Harrison being there at that moment, but he was there soon afterwards; they were talking to a man dressed like a baker.

At half-past eight, did you enter the stable with the party which accompanied Ruthven and Ellis?—Yes.

Did Ruthven and Ellis and one or two more go up the ladder?—They did.

You heard a firing and confusion there?—Yes.

And they were hustled down again?—Yes; and the lights appeared to be put out.

Was there any firing down the ladder?—There were several shots fired down the ladder.

Did you quit the stable?—Ruthven desired me to stop under the gateway, the people were crowding in shortly after the military came.

Before the military came, were there any shots fired from the window of the loft, or the room up stairs?—There were.

When the military came, they entered the stable?—Yes.

Benjamin George Gill sworn.—Examined by
Mr. Bolland.

Are you one of the dismounted horse patrol at Bow-street?—Yes.

Did you form one of Westcoatt's party to go to Cato-street?—Yes.

At what time did you arrive?—I cannot state exactly.

Did you go into the stable?—Yes.

Were Ruthven and Ellis there?—Yes, they were before me.

What did you see?—There was a light there; I saw a man standing at the bottom of the ladder.

Was that man armed?—He had something, but I cannot say what it was.

What sort of a man was he?—A short, thick, stout man, of a dark complexion.

Did Ruthven and Ellis and Smithers, go up?—They went up, and I followed Nixon; he was on the ladder, he was near the top, and I was as close to him as I could possibly get.

Did any thing happen to you, before you could get into the loft?—I heard a report of a pistol, or something in the loft; Ellis came tumbling through the place, as if he had been knocked down; he knocked down Nixon, and Nixon fell upon me in the corner.

Was there a rush from the loft?—There was.

When you got up, where did you go?—I do not say I did get up, but I got near the door, and by a sudden rush, I was pushed into Cato-street.

When you got into Cato-street, did you see either of the prisoners at the bar there?—Yes, Davidson.

Where was he when you observed him first?—I observed him come out of the door with a carbine.

How was he coming out?—Running out; he discharged the carbine right at me.

Did he pass you?—He did; after he had passed me, I saw he was a man of colour.

Did he pass away from you or stop?—He ran.

Did he do any thing more than fire the carbine, before he ran away?—No; I was about three or four yards from him.

Had he any thing else than the carbine?—Yes, he had a large sword; I ran after him, and cried out, "stop him, stop him!" and had very nearly reached him, when he made a back cut at me with a sword, and then he advanced forwards again.

Was he stopped by any person?—He was stopped by Ellis.

What passed on Ellis stopping him?—I cannot say; I got up as soon as I possibly could, and pulled out my truncheon, and struck him on the under wrist, and he cried out "oh; I am lame, I am lame!" I said, "damn your eyes, I will cut your hand off;" I made a grasp at the blade of the sword with my left hand, I found it very sharp, and let go of it; it cut my fingers.

Did you strike him again?—I cannot say.

Did he retain the sword? I think it was twirled round his wrist, by a string on the top of the sword; I think it must have been fastened to his hand, or he would have dropped it before, when I struck him; but on this the sword fell, and I picked it up.

Did you take the carbine from him?—I took the carbine out of the open hand.

Mr. Baron Garrow.—In what position was

he when you picked up the sword; Ellis had got hold of him and another man.

You never lost sight of him after you saw him with the sword?—No.

Mr. Bolland.—Where was he taken to?—Over to a little shop in Queen-street.

Did you take the carbine with you?—I did.

What became of the sword?—I left it with Ellis.

Are the sword and the carbine both forthcoming now?—Yes.

Shall you know them?—Yes, I shall.

John Muddeck sworn.—Examined by Mr. Littledale.

Are you a soldier in the Coldstream regiment of guards?—Yes.

Were you one of the party that went to Cato-street?—Yes.

Do you remember when you got into the yard, seeing any one standing near the stable-door?—Yes; I did not know his name at the present, but I know the person.

Did you see him the next day at Whitehall?—Yes; I found his name was Tidd.

Look round and see whether he is there?—That is the gentleman [*pointing him out*].

Did he do any thing?—Yes; he presented a pistol to Mr. Fitzclarence.

Did he fire it off?—Yes; and I saw serjeant Legg take him afterwards.

Did you after this go into the lower room?—I went towards the stable-door, and I saw a prisoner cut with a sword at captain Fitzclarence, and he immediately turned the sword again to cut.

Which prisoner?—I do not know; he went in again and I did not see who he was, and afterwards Mr. Fitzclarence made an attack at them, and went in at the door, and I followed him in.

After you got in, did any of them do any thing?—Yes; after I got into the centre of the room, the prisoner, Wilson, presented a pistol to my breast, and it flashed in the pan, but did not discharge; I afterwards made a stab at him with my bayonet.

I believe you afterwards secured him?—Yes.

You saw him afterwards, and knew him to be Wilson?—I took him to the public-house and looked at him by the light.

Is that the same person you see at the bar?—Yes, it is.

William Legg sworn.—Examined by Mr. Attorney General.

I believe you are a serjeant in the Coldstream guards?—Yes.

Were you one of the party that went under the command of lieutenant Fitzclarence, on the night of the 23rd of February?—Yes.

Upon your coming into Cato-street, you knew the stable there?—Yes.

When you came to the stable, did you observe any man standing near the stable?—Yes.

How was he standing?—He was standing with his back against the wall, between the gateway and the stable door.

Between the gateway leading out of John-street and the stable door?—Yes.

Had he any thing in his hand?—Yes, he had a pistol in his hand, and he levelled it at lieutenant Fitzclarence.

Was lieutenant Fitzclarence at the head of your picquet?—About a yard and a half at the head of me.

Upon your observing this man level his pistol at lieutenant Fitzclarence, what did you do?—I knocked the pistol aside by my pike, and seized the muzzle end of the pistol with my right hand; a scuffle ensued between the man and me which should have the pistol, and the pistol went off in the scuffle.

Did you pull the trigger?—No, I had hold of the muzzle of it.

The man who had the pistol had hold of the other end?—Yes.

What was the effect of the pistol going off?—It tore my jacket into ribbons; I have the jacket here, if you wish it; whatever the pistol was loaded with, tore the sleeve of the jacket off the right arm.

Did you secure that man?—As soon as the pistol went off, he let it go easily; he never struggled any more for it.

Did you secure him?—I did; I secured him, and delivered him over to the police officers.

Who was that person whom you secured?—Tidd.

You saw him afterwards?—I saw him afterwards and have seen him since.

I believe you then went into the stable and up into the loft?—I went into the stable.

You assisted in securing some of the persons who were taken in the loft?—They had surrendered when I got there to part of the picquet.

You assisted in securing some of the arms that were taken in the loft?—I did.

Lieutenant Frederick Fitzclarence sworn.—Examined by Mr. Attorney General.

I believe you are a lieutenant of the Coldstream-guards?—I am.

Do you remember being applied to on the evening of the 23rd of February to send a picquet to John-street, or Cato-street?—I was.

I believe you commanded that picquet?—I did.

What attracted your notice after you got to John-street?—The report of fire-arms.

In consequence of that report, did you go with your picquet to Cato-street?—I brought the picquet forwards towards Cato-street.

On your getting to the archway, leading into Cato-street, what passed?—I met a police officer, crying out, "soldiers, soldiers! the stable door!" I made towards it, and the moment I got to the door I met two men, one of whom presented a pistol, and the other cut at me by a sword; we exchanged several cuts; he, seeing the body of the picquet coming up,

ran into the stable, and I followed him into the stable. I came up to one man, who said, "do not kill me, and I will tell you all." I gave him in charge, and then returned and took another man out of one of the stalls; the soldiers took him away. I then led the men up into the loft, where I found three, four, or five men, with a large quantity of arms upon the bench, and on the floor.

What sort of arms?—Blunderbusses, pistols, and pikes.

You assisted in securing the persons in the loft, and the arms?—I did.

Serjeant Legg was of your party, I believe?—He was.

Did you observe serjeant Legg contending with a man?—I did not attend to him; my attention was called to the man with whom I had a scuffle.

Lieutenant Frederick Fitzclarence cross-examined by *Mr. Adolphus*.

Did you take Davidson into your custody?—Yes.

Where was he taken?—To Bow-street.

During that time was he taken to any other place?—He was brought into the stable in Cato-street.

Proceeding from the stable, was he taken into any public-house or other house to your memory?—No.

Mr. Attorney General.—You do not remember his being taken into a public-house?—No, I do not; I will not be sure whether he was taken into the Horse and Groom; there were two or three prisoners there; there were Tidd and Wilson, I am not sure whether he was or not, I rather think not.

William Westcott sworn.—Examined by *Mr. Solicitor General*.

You are one of the Bow-street patrol?—I am.

You went to Cato-street on Wednesday the 23rd of February?—Yes.

On going up did you see Ings, one of the prisoners at the foot of the ladder?—Yes.

He was in that stall at the foot of the ladder?—Yes, he was.

John Wright sworn.—Examined by *Mr. Solicitor General*.

You are one of the Bow-street patrol?—I am.

Did you go up to the foot of the ladder in the stable in Cato-street?—I did.

Did you see a stout man standing near the foot of the ladder?—A stoutish man.

Did you take any thing from that man?—A knife.

What sort of a knife?—A butcher's knife and a sword.

Was there any thing twisted round the handle of that knife?—Wax-end.

That knife is in the possession of the officer?—It is.

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I believe you were knocked down?—Yes; immediately after I took the knife, I was knocked down, and received a stab in my right side.

And that man escaped from you?—Yes, he did.

Ings was immediately afterwards brought back in custody?—Yes.

Joseph Champion sworn.—Examined by *Mr. Solicitor General*.

You are one of the Bow-street patrol?—Yes.

You were at the stable in Cato-street on the night of the 23rd?—Yes.

Do you remember seeing the man who was tried here the other day, Ings, at the foot of the ladder?—Yes.

Did he sing out any thing on the officers appearing?—Yes; "look out above there!"

He afterwards, I believe, made his escape?—Yes.

Was he brought in custody?—Yes; Brooks came up bringing him in custody, in the Edgware-road.

Did you search him?—We took him to Mary-le-bone watch-house, and searched him there.

What did you find on him?—Two haversacks slung across his shoulders, under his great coat, one under each arm; a tin case nearly full of powder; three pistol balls; a knife-case, and a belt round his waist.

What kind of knife-case was it?—Made of cloth.

For a large or a small knife?—For a large knife; there is a knife wrapped round with wax-end, which fits it; and which is in it now.

William Charles Brooks sworn.—Examined by *Mr. Solicitor General*.

You are one of the Bow-street patrol?—Yes.

Do you remember seeing a man run in John-street, on the night of the 23rd of February?—Yes.

Did you pursue him?—I met him.

When you met him, what did he do?—He presented a pistol at me, and fired it.

Was the pistol loaded?—Yes.

How do you know?—The ball went through my clothes, bruized my shoulder, and grazed my neck.

On this pistol being fired at you, you staggered into the street?—Yes.

And the man ran on?—Yes.

Was he afterwards taken by Moay the watchman?—Moay laid hold of him.

Was he afterwards searched in your presence?—I searched him in the watch-house, and took two haversacks from him, slung one on each shoulder, and a belt round his body, and a tin case nearly full of powder.

And a knife-case?—No; Champion took that.

In your presence?—Yes, and the ball.

When he was taken, what did you say to

him?—I asked him how he came to fire at me, a man he had never seen before; he damned me, and said he wished he had killed me, as he meant to do.

Samuel Hercules Taunton sworn.—Examined by *Mr. Gurney*.

You are an officer at Bow-street?—I am.

On the morning of Thursday the 24th of February, did you go to Brunt's lodgings to apprehend him?—Yes, I did.

In what room did you take him?—In the front two pair of stairs room.

Did you search the back room two pair of stairs?—I did.

Did you find there any things in two rush baskets?—I did.

Besides the rush baskets, there were an iron pot, and a pike-staff?—There were.

We will not trouble your lordship with an enumeration of the things now, as they will be produced hereafter. Did you ask him a question about that back room?—I did; he denied their being his apartments.

Did you then call up the landlady, and ask her whose it was?—Yes.

What did she say?—She said the lodgings were let in his presence to a man, she did not know his name; I then inquired of Brunt who this man was; he said he had only seen him once at a public-house, and he did not know who he was.

Did he mention how he came to recommend him?—Only that he met him at a public-house.

Was that all?—Yes.

Any thing about his wanting a lodging?—No, not to me.

Did you then go to Tidd's lodgings in Hole-in-the-wall passage?—I did.

Did you find any articles of ammunition there?—I did.

We will not take the detail of that now. At what time did you go to Brunt's?—About eight o'clock; and to Tidd's at nearly nine.

Did you ask Brunt about these baskets?—He denied knowing any thing about them.

Daniel Bishop sworn.—Examined by *Mr. Gurney*.

You are a Bow-street officer?—Yes.

On the morning of the 24th of February, did you apprehend Arthur Thistlewood?—I did.

At about what hour?—Between ten and eleven o'clock in the morning.

Where did you find him?—At the house of a Mrs. Harris, No. 8, White-street, Moorfields.

Up, or in bed?—He was then in bed.

How were his clothes?—He had his breeches and stockings on.

And his coat and waistcoat by the bed side?—They were.

Did you find any thing in his coat or waistcoat?—In his coat and waistcoat I found three leaden balls, a ball cartridge, and a blank cartridge, and two flints, and a small silk sash.

You took him to Bow-street, and then to the Secretary of State's?—I did.

Daniel Bishop cross-examined by *Mr. Curwood*.

Do you know a man of the name of Salmon?—There is an officer belonging to Bow-street of that name.

Did any man of the name of Salmon go with you to apprehend Thistlewood?—Salmon, one of our officers, was present, and likewise Lavender and Ruthven, and several patrolers at the back and front of the house for fear of mischief.

Mr. Solicitor General.—You surrounded the house before you entered it?—Yes.

Mr. Solicitor General.—I am afraid, my lord, the case cannot be closed to-night. I would beg to submit, at what time your lordship would think it proper to leave off.

Mr. Baron Garrow.—Gentlemen of the jury, the solicitor-general intimates, that they have now, on the part of the prosecution, got through probably all their case, except the production of the arms and ammunition found at the various places. If we could hope, that by sitting for some few hours longer, and increasing your fatigue only to that extent, we could finish the trial this evening, I would take your opinion, whether we should proceed to its close; but it is quite clear we should only get on to a late hour of the night, and probably not accomplish it at last. If, therefore, we must adjourn, I have no doubt you will concur with the Court in thinking, this is the most convenient time; therefore, to-morrow morning the counsel for the prosecution will close their case, by the production of the arms, and then the case for the prisoners will be gone into.

Foreman of the Jury.—We all coincide with your lordship.

Davidson.—My lord, having been taken by surprise, and not having my witnesses, would your lordship permit me to be visited by my wife to-night, that I may send for them?

Mr. Gurney.—Your attorney.

Mr. Baron Garrow.—The Court has nothing to do with these arrangements, but those to whom your application will be made through your solicitor, will, I am sure, take care that you shall not suffer by any want of access of necessary persons to you for that purpose. Then, gentlemen, we will have the honour of meeting you precisely at nine o'clock to-morrow morning.

SESSIONS HOUSE, OLD BAILEY,

THURSDAY, APRIL 27th, 1830.

William Davidson and Richard Tidd were set to the bar; and James William Wilson, John Harrison, Richard Bradburn,

John Shaw Strange, James Gilchrist, and Charles Cooper, were placed behind.

Mr. Gurney.—We shall not require the attendance of the other prisoners.

Mr. Baron Garrow.—Is it wished, by the counsel for the prisoners, that they should be present.

Mr. Curwood.—No, my lord.

Mr. Baron Garrow.—The other prisoners may retire.

[They were removed from the bar.]

George Thomas Joseph Ruthven called again —
Examined by Mr. Gurney.

Are there now upon the table the arms and ammunition found in Cato-street?—There are; there are three sticks which have got on by mistake.

[They were removed from the table.]

Withdrawing them, the articles on the table were all found in Cato-street?—They were.

Were there more hand-grenades than there are here?—Yes, six more.

The others, I believe, have been opened in the course of the investigation?—They have.

At the time these pikes were found, were they ferruled, as I observe some of them are now?—They were.

Have the ferrules of the others dropped off in consequence of the greenness of the wood?—I presume it is in consequence of that.

I observe that some of the pike-heads are files sharpened, and others are bayonets?—Yes.

All these holes are bored for the reception of these pike-heads to screw on?—Yes, they will receive them.

Mr. Gurney.—We will hand you, gentlemen, one parcel of the sharpened files, and one parcel of the bayonets, and a pike-staff.

[They were handed to the jury, and one of the bayonets screwed in.]

The hand-grenades, I observe, are all fitted with fuses?—Yes.

Mr. Gurney.—The several persons who found each are in attendance, but my learned friends have not desired the personal identification of each.

Mr. Baron Garrow.—With a view to have that distinctly understood, you may ask him, whether they were either found by him, or delivered into his possession by persons who were there before they quitted the spot; then if the gentlemen wish you to call any person who found any particular article they may have that done.

Mr. Curwood.—We do not desire it, my lord.

Mr. Baron Garrow.—Then, I take it for granted, without calling A. who found this particular blunderbuss, and B. who found this

sword, and so on, that it is to be taken they were all found in the stable at Cato-street, and put into the possession of the witness Ruthven; the gentlemen on the part of the prisoner do not require it to be carried further.

Mr. Gurney.—Whom was the carbine taken from? Davidson?—I cannot state that myself.

Where are the haversacks?—That is one on the table.

They were taken off the person of Ings?—Yes.

[They were handed to the jury.]

Mr. Baron Garrow.—You will have the goodness, gentlemen, to attend to the dimensions of those haversacks.

Mr. Gurney.—Is this the belt, this the knife-case, and that the knife, taken from Ings?—As I understand.

Mr. Gurney.—You observe, gentlemen, the belt and the knife-case are made of the same materials, and you will observe the fitting of the knife and the knife-case, you will observe the wax ends round the handle.

[They were handed to the jury.]

This list is your making out?—Yes.

In the loft, thirty-eight ball-cartridges, fire-lock and bayonet, one powder flask, three pistols and one sword, with six bayonet spikes and cloth belt, one blunderbuss, pistol, fourteen bayonet spikes and three pointed files, one bayonet, one bayonet spike and one sword scabbard, one carbine and bayonet, two swords, one bullet, ten hand-grenades, two fire-balls, one large grenade and bayonet, a rope ladder, one sword stick, forty ball-cartridges, one bayonet and three loose balls, these were all found in the loft: in the stable, in the pocket of Bradburn, six ball-cartridges, three balls, and some string put round him to act as a belt; the pistol which it is alleged Tidd fired, the pistol which it is alleged Wilson attempted to fire, a blunderbuss, sword belt and scabbard, two pistols, one sword, twelve sticks with ferrules: in the pocket of Tidd, two ball-cartridges, and round him a leathern belt: two ball-cartridges facing the stable, and ten ditto in Newnham-street: one musquet cut down and one sword from Davidson; one havemack, cross belts, one pricker, bayonet, scabbard, cartouche box and a belt round his body: two haversacks one belt and tin powder case, four pistol balls one pistol key and a knife-case, from Ings: one haversack containing seventeen ball-cartridges, three balls, one pistol flint, one pricker, one worm for drawing cartridges, one knife and a turn-screw, one stick cut to receive a bayonet, left in the public-house; that was left by Cooper or Gilchrist?—By Cooper.

Is that also made to receive a ferrule at the top?—Yes; it is.

Mr. Baron Garrow.—That was left by Cooper, and afterwards asked for by Gilchrist?—Yes.

John Hector Morison called again.—

Examined by *Mr. Gurney*.

You mentioned, yesterday, that the prisoner Ings had brought you a sword to sharpen, on Christmas eve?—Yes.

Look at that, and tell me whether that is the sword he brought to you to grind? [*shewing a sword to the witness.*].—Yes.

What were the directions?—To grind it sharp from the heel to the point, and to make the point as sharp as a needle.

Is it particularly sharp?—Yes.

[*It was handed to the jury.*]

Mr. Baron Garrow.—Is that the one you call a scimitar?—They are both of the scimitar shape.

Mr. Gurney.—Has the edge been sharpened since it left you?—The edge has been made much keener, by sharpening it with a steel or a stone, I cannot say exactly which.

Benjamin George Gill called again.—

Examined by *Mr. Gurney*.

You mentioned a carbine and a sword taken from Davidson, can you select those from the arms which are now on the table?—Yes.

Mr. Attorney General.—Your lordship will recollect, he said there was a sling.

Mr. Baron Garrow.—Yes; you will recollect gentlemen, this witness stated, that he believed there was a sling attached to the hand of the prisoner, whom he struck to oblige him to resign it; you will observe, the one produced has such a sling.

Was the carbine loaded when you got possession of it or not?—It must be loaded because he had discharged it at me before.

Did you observe any moisture upon it?—

After I took it to Bow-street, it was quite damp; I put my finger down the barrel and shewed it to several gentlemen who were there.

George Thomas Joseph Rathven called again.—

Examined by *Mr. Gurney*.

Were the greater part of these fire-arms loaded when you took them?—They were; we had them drawn for the purpose of being produced here.

What were they loaded with?—With ball, with the exception of one gun which had large shot.

James Aldous called again.—Examined by *Mr. Gurney*.

You have mentioned a brass-barrelled blunderbuss taken out of pawn by Davidson on the 23rd of February; look at that blunderbuss, and state whether you are able to identify it as the same?—Yes; I believe it to be the same.

Davidson.—My lord, may I ask *Mr. Aldous* one question?

Mr. Baron Garrow.—Yes, certainly.

Davidson.—Do not you recollect, when I pledged it, my saying it was not mine, and that you said you would lend me seven shillings upon it, as you knew me, otherwise you would not have taken it in at all; that it was not worth that?—I do not exactly recollect that; the prisoner might make that observation, but I do not recollect it.

Samuel Hercules Taunton called again.—

Examined by *Mr. Gurney*.

You mentioned to us yesterday, that you had gone to the lodgings of Brunt, and that in the back room two pair of stairs, you found two rush baskets, with a number of things?—Yes, they are here.

Give us the contents of those rush baskets?—Here are nine papers with rope-yarn and tar.

Are these what you call the fire-balls?—They are [*One was handed to the jury.*].—There are also some steel filings.

The other basket is what was wrapped up in a blue apron?—It is.

What did you find in that basket?—Four grenades, three papers of rope-yarn, tar, and other ingredients, that is fire-balls, two bags of powder, one pound each.

These bags are made of flannel, and you have weighed them, and found they contain one pound each?—Yes.

[*They were opened, and found to contain gunpowder.*]

Have you any of the same kind of flannel bags empty?—Five.

Is gunpowder ever sold packed up in that form?—I do not know; I never bought any in such a state.

Did you ever see any exposed to sale in such a state?—No, never: a paper of gunpowder a leather bag: containing sixty-three bullets.

That cartouche box?—Yes.

These were the contents of the baskets?—Yes.

You mentioned an iron pot?—This is it [*producing it*].

Does it appear that tar, or some such substance, has been heated in it?—There has been; there are the remains of it now.

And a pike handle?—Yes; there is a pike-handle.

Are the hand-grenades which have been produced from Cato-street, and those you found there, of the same description?—Yes, exactly.

You mentioned that you proceeded from the lodgings of Brunt to the lodgings of Tidd?—I did.

Give us the things which you found at Tidd's lodgings; have you a haversack here?—Yes.

What does that contain?—Four hundred and thirty-four bullets, one-hundred and seventy-one ball-cartridges, sixty-nine ball-

cartridges without powder; and a brown paper parcel with three pounds of gunpowder.

Did you find a coarse canvass cloth?—Yes.

What did you find in it?—Ten grenades, eleven bags of powder, one pound each.

Do you mean flannel bags, of the same description with the others?—Yes; and ten empty bags; a small bag, with a tin powder-flask; sixty-eight bullets, four flints, and twenty-seven pike-handles.

Are those the pike-handles you have by you?—Yes.

Are they of the same description with those found in Cato-street?—Yes.

Were they all ferruled?—They were when I found them, but being green, some of them have dropped off.

Were they all bored to receive pike-heads?—Yes.

Did you also find a trunk?—Yes.

What are the contents of that trunk?—Nine hundred and sixty-five ball-cartridges.

Made up in parcels of how many each?—Five each.

A Juryman (Mr. Young).—Would that box be strong enough to remove those from place to place?—It was tied up strongly when I found it under the bed.

Mr. Gurney.—In that case would it be strong enough to be removed?—Oh yes, certainly; it is now ready to break with being carried about so often, and brought down here.

Serjeant Edward Hanson sworn.—Examined by Mr. Gurney.

You are a serjeant in the royal artillery?—I am.

And acquainted therefore with such things as you see before you?—Yes.

In the first place look at these flannel bags of gunpowder, containing one pound each; what purpose were they intended for?—I suppose they were meant for cartridges for a six-pound gun.

Made up in a proper and convenient shape for that purpose?—Only too small, they should have been rounder.

Would they answer that purpose?—Yes.

They are made up differently from what you, as a military man of experience, would make them?—Yes.

Mr. Baron Garrow.—You would make them in a mould fitted to the gun?—Yes.

A person who had no opportunity of modeling from a gun would make them so?—Yes.

Mr. Gurney.—What appear to you to be the ingredients of these fire-balls?—They are nearly all alike; this is exactly like the other, except that one is without brimstone; this has oakum, tar, rosin and brimstone.

One of them you found without the brimstone?—Yes; that is all the difference I have seen in them.

Would they be effectual means of setting a

building on fire, if they were thrown into a window on the floor?—Certainly.

Mr. Baron Garrow.—Do you apprehend that the one without brimstone was so from accident or design?—I do not know; I should rather think it was meant for the bottom of one of these grenades.

The composition of which the brimstone would not enter?—No.

Mr. Gurney.—If one of these were thrown into the windows of a hay-loft, with two or three loads of hay and straw, would they burn it down?—Most assuredly.

Or thrown into any building and lighting on wood, they would set it on fire?—Yes.

How long would they burn?—That is a good large one, that would burn four minutes.

Amplly sufficient to set it on fire?—Yes, there would be a body of red fire left after it had done blazing.

Look at one of those hand-grenades, and open it; with respect to those you have opened, what do you find to be in the interior?—A small box of tin.

Containing what?—About three ounces and a half of gunpowder.

Is there a fuse brazed into this box?—Yes.

Mr. Gurney.—As the counsel for the prisoner do not object to our leading on these points; do you find first the rope-yarn the exterior?—Yes.

Then a sheet of paper?—Yes; there was a piece of stocking on one.

Then more rope-yarn?—Yes.

Then a number of pieces of iron tied together round it?—Yes.

You then come to a tin box, with a fuse brazed in it?—Yes.

And filled with gunpowder?—Yes.

You have found that three ounces and a half of gunpowder had been the contents of the box?—Yes; I weighed one, and they all appeared to be the same.

Is that more than sufficient for a nine-inch shell?—Yes.

Mr. Baron Garrow.—Have you found as many as twenty-five pieces of iron?—Yes.

Mr. Baron Garrow.—I ask this, from his examination on the last occasion; the counsel do not object to it?

Mr. Curwood—No, my lord.

Mr. Baron Garrow.—If that were thrown into a room with persons in it, would it be discharged in about half a minute, and probably be attended with death and destruction to the persons in that room?—Most assuredly it would; [the witness proceeded to open one in the presence of the jury], there is some brown stuff here.

Mr. Gurney.—Is that cemented on?—Yes, it is; here are under that four great nails fastened on; then there is another piece of this brown stuff.

Now you have come to the tin carcass?—
Yes.

Force out that fuse which is brazed in, and empty the gunpowder; that fuse has a priming in it?—Yes; it has a composition in it.

That is full of gunpowder the same as the other?—Yes it is; the very same.

Is the powder good?—Very good.

These hand-grenades are not made, I believe, in the manner in which a military man would make them?—They are not.

Are they so constructed as to be very effectual and destructive?—They are so.

The regular hand-grenade is a shell?—It is.

That could be obtained only by resorting to foundries?—No.

There are only four pieces of iron there, but you found in another twenty-five?—Yes.

They vary according to the size of the pieces?—Yes.

Mr. Attorney-General.—My lord, that is the case on the part of the Crown.

DEFENCE.

Mr. Curwood.—Gentlemen of the jury, it has now for the fourth time become my melancholy task to address you and other juries on these occasions. I say my melancholy task, because it is known to all the world, that notwithstanding all that my learned friend and myself could urge on behalf of the prisoners, three former verdicts of guilty have been pronounced. Irksome as the task was to me in the first instance, I need not tell you that its weight is much increased in consequence of those verdicts. I should very ill have executed my duty on the former occasions, if I could have any thing new to offer to you on the present, because I must have given the case very little attention indeed, even for the short time that I had to consider it, if, at least, during the progress of the three former trials, almost every thing that could present itself to my mind had not already presented itself. But, nevertheless, I should be deserting my duty to these unfortunate men at the bar, if I were not, upon the present occasion, to address to you some at least of those observations which, according to my view of the case, ought to be attended with some consideration.

I told you, or at least some of you who were on the former jury heard me say, that the first time I rose to address you (and I said it sincerely) I gave more weight to the evidence then brought forward on the part of the Crown, than, upon a re-consideration, I thought it deserved. And the more I come to look at the evidence which has been given—I mean the important and material parts of it, that is, those parts which are to sustain the issue you have to try—I still consider it is of so suspicious a nature, that every time it is presented to you anew it deserves, at your hands, a new and further consideration. What I mean is, that the charge of treason is mainly, and I believe I may almost venture to say wholly, sup-

ported by the evidence of an accomplice, and such an accomplice, that a more complete man of infamy I do not think can be taken out of the sink of human crime, of any age or of any country. He stands tainted in no common degree, he is devoid of almost every moral and social duty; he has violated the confidence of private life equally with his public duties:—his duty to God, his duty to his king, his duty to the public, he has equally disregarded; there is no duty, public or private, which he seems not to have violated; he admits, that he has been an apostate from his religion, and of course a denier of that God to whom he appeals for the truth of the testimony he is to give; he admits, to-day, that he has been an infidel and a traitor, a meditated murderer and an assassin. Now, can you have a worse man before you? The deeper a man is steeped in infamy, the less he deserves credit at your hands; or, if he tells a story, it ought to be a story probable in itself, and confirmed by witnesses of truth and veracity.

The misfortune of this case is, that there is mixed up with the charge you have to try, so much of undeniable guilt, that I am afraid it is almost beyond the human power to separate that part of the case which is proved, from that which is only charged, and, as I humbly contend before you, not distinctly proved. It is not in the nature of the human mind that, where falsehood is mixed up with truth, a jury should be able easily to throw aside the falsehood, and discriminate between that and the truth with which it is blended. It requires patient inquiry and nice discrimination, and therefore I pray you distinctly to see what is the charge upon which you are to pronounce; and to consider not, how much guilt is proved against these men, but whether there is distinct evidence to prove that precise charge upon which you are to found your verdict. If you come to examine and separate the evidence minutely, I think you will find that all that fixes the guilt of high treason upon these men, depends solely upon the testimony of that infamous witness Adams; because it depends entirely upon what took place at those consultations, at which, he says, he was present. Neither Hiden nor Monument (who are two witnesses implicated to a certain extent in the same transaction) was present at those consultations, and therefore neither can give you an account of what passed there. And if you are inclined to give them full credit, they both distinctly admitted that, although they knew (and one participated in) the horrid plan of assassinating his majesty's ministers, yet they knew of no ulterior plan of levying war against his majesty, or conspiracy to levy war against his majesty, which is the main charge which you have to try.

Always bear in mind that such is the charge, or rather those are the charges you are to decide upon. Whether there was any conspiracy to levy war (for that is the language of the indictment) against his majesty, whether war

was actually levied, or whether there was any conspiracy to depose or put the king to death. Now let me recall to your recollection, what was admitted by my learned friend, the counsel for the Crown, in opening this case to you (and he did not admit it without good consideration, for he is too good a lawyer to admit it if not well founded) that, whatever may be your opinion of the nefarious and wicked design to assassinate all his majesty's ministers, yet, in point of fact, such assassination, or a conspiracy to do it, does not in itself amount to high treason. Take this admission and apply the evidence to it; see whether you can find in the evidence, as it is confirmed, any thing beyond that plan. Do not suppose me to speak with levity of that matter, but see whether you have consistent and confirmed evidence, beyond that fact, of any design of what may be called levying war. The design of a conspiracy may be gathered from the consultations and overt acts of the conspirators; here are certain overt acts, I admit, proved, which go in confirmation of some part of the testimony of Adams; the finding of arms, and the meeting in Cato-street, for instance. But that only goes to confirm the one part of the alleged conspiracy. It goes, I admit, to confirm him most mainly in this, that they entertained a design of assassinating the ministers; and if the prisoners were here now, answering for that charge, I could not and should not have a single word to say to you; I could not urge that the witness, infamous as he is, is not fully confirmed up to that extent; but beyond that I contend there is not a single particle of evidence to support the charge of treason. Consider first the probabilities in such a plot to overturn the government; you must admit (since the ingenuity of my learned friends cannot deny it) that as a scheme for that purpose it is so wholly absurd and ridiculous, that it never could enter into the head of a man who had one particle of reason left. No man who is walking about without a keeper at his heels, and in a straight waistcoat, ever could set about a plan of oversetting the government of such a mighty empire as this with means such as they appear to have had.

My learned friend has said very truly, that when men enter into great schemes, their imagination deceives them, and they are so anxious for their ultimate object, that they overlook all difficulties which lie between them and the wished-for end. That is true to a certain extent; men do not properly appreciate difficulties which are in the way of their ardent wishes; but there is a limit to that error; men do not contemplate impossibilities although they underrate difficulties. If you should be told, it was a part of their scheme to arrest the sun in its course, or to roll back the tide of the Thames,—if a witness were to come and assert boldly that such was part of their scheme, you would not and could not believe it; then I will put it to you, are even those impossibilities which I have stated, more absurd than

the plan these men are said to have contemplated, for the purpose of oversetting this great and mighty government with the means they proposed? Now, if this is given you upon the evidence of an infamous witness, and is not corroborated by any witness of character, can you, will you, or ought you, to believe it, when the lives of eleven men, ay, when the lives even of eleven infamous men, depend upon it? For however infamous you may consider the persons charged in this indictment to be, thank God there are specific laws for every offence; and whenever a jury may find them guilty, of those charges of which they may be guilty they must pay the penalty annexed by the laws to such offences. But it is your duty, not to convict them in one form of indictment, merely because you think they have been guilty of another offence of which they might have been convicted in another form of indictment.

Before I proceed to the comments I was about to make on the evidence, let me make this observation to you, that an accomplice, when he comes before you as a witness, should at least appear with all the marks of sincere contrition; you should be well satisfied, that however iniquitous his former conduct has been, at least at the moment he presents himself to you, to detail the circumstances he is about to disclose in evidence, he appears with a mind thoroughly convinced of the iniquity of that former conduct, and that he is then determined to speak truth even to the last letter. If you should see by his manner and conduct, that even in that box he was inclined to shuffle, to prevaricate or speak that which was false, would you give him credit for a single moment? Now let me bring this to your recollection; when I cross-examined him as to his motives, in joining and confederating with these people, what did he say? it was fear kept him to the last with this band of conspirators! that this was an idle excuse I am sure I need not say one word to convince you; what fear could restrain him from going to the proper authorities and disclosing what he knew? what more did he say to account for his having entered into this plot? Remember it was first told him on the 2nd of January; he paused over it ten days, and on the 12th of January he was introduced to Thistlewood; he heard all that Thistlewood had to tell him; he attended every committee from that time to the 22nd of February daily, and twice a day; it is true, as my learned friend reminds me, that he was fifteen days in prison, where he might safely have made a disclosure; but down to the very night when they were all taken prisoners, he continued with them, and to all appearance, one as fully bent upon effecting the scheme as any amongst them; and it was not until that he got back to the Christian religion, that is to say, when the halter stared him in the face, that his conscience informed him he was in the wrong; and you remember when I asked him if he did not en-

ascertain the design of the others, what was his motive for thus apparently acting with them? he tells you, with an unblushing front, that he had some suspicion, of the character of his companion Brunt, and in order to ascertain the truth of that suspicion, he joined in this most horrid plot! there is a man joining in as murderous a scheme as ever was devised or imagined, and all for the purpose of ascertaining a doubt as to the character of his companion! Do you believe him when he tells you this? if you do not believe him, then down to the very moment in which he stands in that box, you see him still persisting in crime. If he is still persisting in crime and uttering falsehood, how is it possible to believe any part of his statement? how can you rely upon any thing that he says?

With respect to the crime itself, it is of the greatest importance to the safety of the lives and liberties of us all, that the bounds of law should be faithfully preserved; crime when defined, no doubt, ought to meet due punishment, not abstractedly, but in that mode the law has pointed out. If you confuse the bounds of offences you take away the best safe-guard of the subject. But, above all, this maxim applies to the law of treason. As it is accurately defined, so ought those definitions to be most religiously observed; and unless you are convinced that the parties here charged are guilty of the actual and specific facts charged upon them, you ought not to find them guilty. I do not hesitate to say this before gentlemen who have pronounced former verdicts of guilty, and, I must admit, upon the same evidence; because from the manner in which you conducted yourselves upon former occasions, I saw that you gave great attention to the cases before you, and I know those verdicts were the result of your clearest conviction; and knowing that fact, it is with confidence I feel, that if upon another review of the evidence you should see occasion to change your former conclusions, you will have manly boldness enough to do it; and, therefore, I do not hesitate to urge again before you for further consideration, arguments, although from the past events I must feel they have been unsuccessful upon the former occasions.

I was stating, that in all cases it would be necessary to preserve the bounds of crime, more particularly, in cases of high treason. Laying aside, for a moment, the consideration of the suspicious nature of this testimony, I will suppose you to give full credit to the evidence. Then, I say, a very material consideration arises, whether, under this supposition of giving full credit to Adams, the prisoners were conspiring to levy war, or to make a great and enormous riot for the purposes of plunder, or any other illegal object; for although the guilt of that intent would be very great, yet, if it amounts only to a riot, you ought not to find them guilty of high treason. I took an opportunity on a former occasion, and must again refer you to a very

eminent law writer as to this point; he states that there ought to be an accurate distinction between riot and levying of war, which latter would amount to high treason; and he states a number of acts of parliament, and says, that all those acts would be useless if every great riot is to be construed a levying of war; but then he goes on to state other cases where what in common understanding would be considered a riot had been held to be treason, and he says, "These things being decided, we must now acquiesce in them, and consider them as law." Now when a great and considerate writer uses a particular phrase, it is not used without intention; and, therefore, I contend that when that learned judge uses this singular phrase "we must acquiesce in it," that he means, if I had this for the first time under my consideration, I should say it does not amount to levying of war; but, inasmuch as former judges have so decided, I must give a reluctant consent. The inference I draw from this passage is this, I would call on the learned attorney-general (and if the case exists there is no man more competent to give it you), to shew you a case precisely similar to the present, that is, where a case of this sort has been held to be a levying of war. If he does not shew you an instance precisely similar, then hear what the learned judge says; "it is much safer to apply to parliament for their understanding of the matter." Do not you extend the law of treason by construction or implication, because, says he, "no man knows where it may end." Most truly he said so; for if you enlarge constructive treasons, if you make that a constructive levying of war, which, according to common sense is not a levying of war, no man can tell where it may end. Every resistance to the civil power, perhaps every resistance to a play-house guard in a play-house riot, may be considered, in the event, a levying of war, in opposing the military and civil power of the king, and therefore high treason.

Look at the evidence which Adams gives. He states that he was at most, and, I believe, pretty nearly all their consultations. At the first consultation which he states to be of any importance, which passed a few days before the funeral of his late majesty, he says, he saw Thistlewood, Harrison, and one or two more, sitting in deep consultation, as if they were agitating some important subject. Thistlewood then related to him, that Harrison had told him it was extremely probable a great part of the military would be out of town at the funeral of the king; and it struck him that would be a most favourable opportunity, to do what? to raise an insurrection and levy war? No! he uses a forcible though a vulgar expression, *to kick up a row!* to raise a riot for the purpose of plunder; and you will recollect, at a subsequent meeting, they said they could wait no longer than the following Wednesday, why? because they were all so poor. Twelve or fourteen men of the humblest situation in life, were about to overturn the empire, and

they were all so poor, they could wait no longer than the following Wednesday! Now apply your common sense to the transactions stated; is it not more consistent that these poor men were only waiting to begin a system of riot and plunder, rather than a system of rebellion and war against the government of the country?

I stated to you before, that as a system of levying war, the scheme was so absurd it was wholly incredible; that it did not become credible because it was sworn to; and more particularly that it did not become credible because it was sworn to by a witness of such infamous character.

On former occasions, my learned friend and I went through with more particularity the evidence in detail; but I will now merely give you the outlines of it. The first was their scheme of assassination, which I do not mean to deny has so much confirmatory evidence as to raise a fair inference in your minds, that they contemplated that fact; but you have also the admission of the learned counsel for the Crown, that that fact does not amount to high treason; that the crime of high treason consists in the levying or conspiring to levy war, and not in killing or conspiring to kill the ministers. Let us now, therefore, look to their preparations and means for levying war. They talked of having forty men, and with these they were to possess themselves of the cannon in Gray's-inn-lane; how many men it might require for that I do not precisely know, but without horse and without apparatus I should think the parish watch would have prevented their performing that service. They were further to detach another part of these forty to take the six pieces of cannon in the Artillery-ground; how many men it would require for that object a rough guess would enable us to judge of. They were to send another detachment to prevent a single orderly going to Windsor; a single man could not perform that task, but they must send a sufficient detachment to take possession, not only of the usual road, but they must have a sufficient force to prevent the men passing out over any of the bridges, or by any other road; they must therefore take possession of every outlet from London; they were to take the telegraph, to prevent a communication with Woolwich; they were to dig trenches, to prevent the approach of cavalry; and all this with a force of forty men! Now, I ask, whether the absurdity or madness of this supposed plan does not make it wholly incredible; even after giving full credit to the assertion of my learned friend, the Solicitor-general, that men in their eagerness to obtain an ultimate object overlook intermediate difficulties? Are these difficulties they have overlooked, or are they not the ravings of insane minds? Who has told you these designs existed? The witness Adams—you are to believe him; why? because, say the learned gentlemen on the other side, he is confirmed. He is confirmed as to certain

things, I admit; but because he is confirmed in certain things, are you to believe every absurdity that so infamous a witness chooses to state? I told you before, and I beg leave to call your recollection to it again, that he is not confirmed as to those points which involve the crime of treason. He is confirmed as to the procuring of the arms, and so far he may be confirmed as to the point relating to the assassination; but he is not confirmed as to those plans which he says passed at their deliberations, and which alone make the treason. Monument was not there; he cannot and does not confirm him; and as far as he knows and states, he does not certainly confirm the plan for levying of war. Hiden was not there; he does not attempt to confirm him; and I think in cross-examination, he told you expressly in words, that he had no knowledge of any conspiracy or plan for levying of war; therefore, all he confirms, is the plan of assassination, not the plan of levying war; and do not, I pray you, forget for a single moment, that the plan of levying war is the only thing which constitutes treason in this count of the indictment.

There was one piece of evidence indeed, which, from reading the notice given to the prisoners, I was taught to expect would have been produced, which would have been mainly confirmatory of their supposed intention to excite war in the state. The prisoners had notice to produce a proclamation, which was said to have existed, and which would have clearly manifested their intention, namely, a proclamation, "that their tyrants were destroyed; that the friends of liberty were called upon to come forward as the provisional government was then sitting." Signed, "James Ings, secretary." Now, if that proclamation were in evidence before you; if it had been produced; if it could have been produced; or even if its existence could have been proved by testimony such as you could believe, I must here admit at once, however visionary, however absurd all their schemes were, yet if you had unquestionable evidence that such were their schemes, that such had been their deliberations and consultations, however absurd they were, I must have admitted the case was made out against these men. But is that fact confirmed at all? neither Monument nor Hiden, the confirmatory witnesses, say a word about it; they know nothing about it. Does any other witness confirm it? I will tell you what the supposed confirmation of this proclamation is, the witness Adams has told you that such a proclamation was written, and that six sheets of cartridge paper were sent for, upon two or three of which sheets of cartridge paper these proclamations were written. Hale proves he was sent to fetch cartridge paper; is the sending for a sheet of paper any proof what was afterwards written upon that paper? the wicked ingenuity of this fellow, feeling that he had here to make out a case of high treason, has availed himself of a fact in the cause,

which could be proved, to introduce a fact into the cause which I am bound to say did not exist, because there is not a shadow of proof of its existence; he does not even tell you, that those proclamations were destroyed. The witness who confirms the fact of sending for the paper, afterwards states what I consider another important fact, namely, that among the things in the cupboard was found part of the cartridge paper: now, if any thing had been written upon that cartridge paper, if even a fragment of it had been left, if you could only have found the words, "provisional government" upon that paper, I would have said that was a fair inference for you to say, that having found a part, you might fairly believe the rest which was spoken to, though not found there. But there is not a single fragment of writing, nor a single witness who affects to have seen it; but you see a part of the paper is found afterwards in the cupboard without a blot upon it. The men had no suspicion when they set out on this plan, that they should be taken; but when they are taken, not one word of this proclamation is found upon them, and the whole proof of this most important piece of evidence which is to give a colour to all the rest, remains on the unsupported testimony of a witness such as Adams, who has described such facts of himself that I can hardly find terms to say what the man is; but I must say, and do and must ever feel, that he is one of the basest of mankind; and even in the witness box shows that he is not worthy of credit. Now, can you believe this piece of evidence upon the testimony of such a man?

If, then, it be material and necessary to confirm this man, are there other sources from which he might have been confirmed? because if there be any one man in existence, who could have given confirmation to this man, but who is not called, you will mainly suspect, that if that man was called, so far from confirming him, he must have destroyed the whole of his testimony. There is a man in existence, we know, who could have confirmed him; there is a man in existence, who has been called to confirm him, but that man is not called again; I mean a man of the name of Dwyer. There was an attempt made, when that man was called, to impeach his testimony, and I suppose you did not think his testimony upon that occasion was impeached, because I am bound to assume, you gave credit to him. My learned friend, the attorney-general, seems to think I am irregular in what I am stating, that I ought not to allude to the former trial.

Mr. Baron Garrow.—It is not strictly correct, but one is reluctant to interrupt a gentleman in your situation; but even if your conclusion is right, that the jury did not believe his evidence, it would be the more proper for the Crown to pause as to calling him again.

Mr. Curwood.—My argument is, that the jury did believe him then.

But there is a man of the name of Edwards,

who is not included in the indictment, though throughout the evidence in the cause he appears to be a most active conspirator; he is at every meeting; you find him manufacturing the hand-grenades; he is the man who is charging the fuses; why is he not called? why is he not here? My learned friends must pardon me for saying, that I think every witness, who by any possibility could give confirmation to such a man as Adams, ought at least to appear in that box to be examined, and to stand the test of cross-examination; and you must suspect there is something amiss behind, when that witness is not called before you.

It may be said, that though Edwards was there, and is not called, there were other conspirators present, who are not in the indictment, and whom the prisoners might have called, and who are competent witnesses. If this had been a case of mere guilt or innocence there might have been a great deal more in that argument; but, inasmuch as those witnesses cannot be called to say that they are innocent men, for if they come here they must admit that they have been guilty of great and atrocious crimes, though they might conscientiously and truly swear, that they had not been guilty of this specific crime, they would come into this court with halters about their necks, and would not be suffered to leave that witness box, but most probably would be sent from thence to Newgate. Is it likely, then, that they should be brought here by the prisoners? Let not that argument, therefore, press too heavily against the prisoners. If there was any truth in this story, there would have been matter, as I apprehend, of confirmation from other quarters; because, on the night when these parties met in Cato-street, to carry into execution that plan, which I perhaps must admit they had in contemplation; if there was any truth in the testimony of Adams, as to their ulterior plan, at that very moment other parties ought to have been proceeding towards the Artillery-ground and Gray's-inn-lane. Now, however, the plan in Cato-street failed; it did not fail time enough to prevent the operation of the other parties. If there were any truth in the idea of this plot, there would have been some attempts in the other parts of the town. Now it appears, that every thing was quiet there, and that therefore, as far as it operates at all, operates in contradiction to the case of the Crown.

There is, I admit, connected with this plan of assassination a great deal of conversation about public dissatisfaction. Can that, or can it not be explained according to now existing events? That this lower order of politicians had taken a scheme of arming themselves, perhaps it is impossible to deny; but what I deny is, the inference that my learned friend, the counsel for the Crown, drew from it, that because they took to arming themselves, therefore they must of necessity have contemplated raising rebellion against the constituted au-

thorities of the country. In other times, and under other circumstances, perhaps, it might have been a strong argument that it was so intended; but look only to recent events, and see whether in those recent events you do not find a key to the whole transaction. I have alluded before, and must of necessity allude again to a late public transaction (for where the course pursued by the counsel for the Crown is the same, my track to follow them must be the same also), though it might be tedious to the same persons to hear the same things repeated again and again, yet it becomes a duty, and some of you have not heard what others have. Then let me call your attention to the event at Manchester; where an immense population, as it now appears, unarmed, were attacked by an armed force. In speaking of this event, I am most anxious to say nothing that should intimate an opinion from myself either on the one side or the other; here I wish to discard, and I hope you will do the same, any political feeling I may have respecting men who are entitled to be defended and judged of according to the strict letter of the law, without any regard to their actual or supposed political conduct. But most certain it is, that by one set of men that attack was considered a necessary act of duty; another set of men, who were favourers of government in the main too, thought it an act of oppression on the people; while another party did not hesitate to call it the massacre at Manchester; and as they considered it an attempt, on the part of government, to prevent the exercise of the legal right of Englishmen to assemble and discuss their grievances, and to put a stop to that which we consider as one of the best constitutional safe-guards (I say nothing, gentlemen, who are right, or who are wrong), but this I know, it was felt or said by many, that, inasmuch as people could not assemble unarmed with safety, many of the demagogues took advantage of that feeling, and held out to the people that it was necessary they should arm themselves to attend those meetings which they considered as legal assemblies; and that explains what Thistlewood said to Monument, "All my people are arming themselves;" he does not go on to tell him we are all arming ourselves for the purpose of raising rebellion against the government; but taking the current feeling of the day among certain people of the country, it is this; "notwithstanding the attempts to prevent our public meetings, we will continue to meet, to discuss our grievances; and as we may be attacked by an armed force, we will arm to repel force by force." I do not say that it was not a desperate resistance of the law, but be it so. If any of you think it was, still that will not warrant you in coming to the conclusion, that the men who so acted are guilty of high treason in levying war against the government. This transaction will furnish you with a clue to a great deal of the conduct of these persons; it will furnish you with the reason why these men were arming

themselves, without resorting to the supposition adopted on the other side, that because they armed themselves they were of necessity contemplating war and rebellion.

What fortifies me in this conjecture, and what produces the little pleasure that could affect one's mind in the contemplation of the transaction, as it is detailed to us, is this; I do not find that the witness Adams, on any one occasion, has stated expressions hostile towards the person of the king; this, at least, is a feature of the case very distinguishable from the cases which happened in the year 1794. I dare say many of you recollect the proceedings of the reforming societies of that day, when not only our sacred sovereign, but the very kingly office itself were spoken of in terms which made one shudder. And I am most happy to lay my finger on any thing which can relieve the general gloom of this case. In no part of this transaction, as it is stated to us, is there evidence that a malignant expression was used against the king's person; and if I might here deviate to state a private feeling of my own, I feel it with particular satisfaction, for I am one of those who think we ought never to name our king and our sovereign, either publicly or privately, without respect and veneration. I do not deal in the language of adulation, gentlemen; I am one of those who think the name of the king ought never to be mentioned without respect; and I do not say so from motives of flattery, but from what I consider sound constitutional principles. Because that does not restrain me or any man from boldly and fearlessly canvassing the acts of any administration, and expressing freely my opinion of their results; for the acts of an administration are to be condemned if bad, not as being the personal acts of the king, but as the acts of men who, by bad advice, mislead their sovereign; and I have therefore a right to oppose the acts of any administration boldly and freely, so it be done with decent language and temperate conduct, and I do not, in so doing, fail in the least in that reverence and respect due from every subject to the royal person and authority.

In the variety of evidence which has been given to you on this occasion, perhaps you will pardon me if I pause for a moment to see what further observation may present itself on different parts of it. One observation strikes me at this moment, that a witness, such as Adams, at least, should be consistent in his testimony. But I cannot fail of observing,—and it appears upon his cross-examination, therefore I may observe upon it here, that on every trial he has varied something, and added something new; now a man who came in the first instance to tell you a story so much in detail, ought not to have added other material facts. But I cannot fail to observe that as the case of every separate prisoner has come forward, he has found out some new fact pressing proportionably harder upon that particular prisoner. This at least is a suspicious feature in his evidence,

and will not render it more worthy of credit at your hands.

With respect to the confirmation he has received at the hands of witnesses whom you cannot suspect, that confirmation does not go to the point of treason: recollect, the treason is the motive of their assemblies, and is to be inferred from what passed in their deliberations; that rests wholly upon himself; no other witness speaks to that matter. The first head of confirmation which is given is, that they took a room (two or three witnesses are called who concur in that respect) at the back of Brunt's, and had frequent assemblies there; that is a fact not denied; but it is not their meeting in that room, it is what were their deliberations when they were so met, which you are to consider. To illustrate this: suppose in any one of the clubs (the shoemaker's club for instance, which has been talked of) Mr. Monument had come forward, and stated, that in this shoemaker's club there were treasonable conversations carried on, and that some person had come and proved that all those parties met in this room; he is confirmed as to their being there; but are you therefore to believe a most wicked witness, when he invents all sorts of stories as to the conversations in that room?

Then there is another piece of confirmation, that certain persons were watching about lord Harrowby's door; that is, I admit, a confirmation of part of his story, but to what extent? it is a confirmation of the story, that they had in design this desperate assassination plot, but it is not a confirmation that they meant to levy war against his majesty; that does not stand confirmed; so that all the confirmation coming from unsuspected sources goes to the extent of an assassination plot, but not a conspiracy to levy war against the constituted authorities of the country.

It has struck me in re-considering this very important case, that I may have overlooked (what if I have overlooked must be ever matter of deep regret to me) a very important consideration of the evidence, which, if I am right in my present view of it, ought not only to serve the present prisoners, but ought to have served those who have gone before them; the English law in its great regard to the subject's safety, with respect to the crime of treason, has said, no man shall be held guilty of treason, without being convicted by the testimony of two witnesses; and here, for a moment, I would beg his lordship's attention: there must be two witnesses to a substantive treason. I do not mean to contend there must be two witnesses to each overt act, but there may be one witness to one overt act, and another witness to another overt act, of the same species of treason. Then let us look at the substantive treasons stated in this indictment, and at the overt acts there charged in support of them, and see if there be two witnesses to a substantive treason, or if any two of the overt acts be proved by any witness, except Adams.

The indictment (and you will consider it

with great attention) states eleven overt acts; they are differently stated in three of the counts of the indictment; but I believe they are in substance all the same. When I have gone through the overt acts in the first count of the indictment, you will consider whether you find two witnesses speaking distinctly to the same thing. The first count, as you know, turns upon whether they intended to levy war or not; and the first overt act stated is, that they met, and assembled, and conspired and consulted, to devise, arrange and mature plans and means to subvert and destroy the government and constitution of the realm. Now, the fact of their meeting is proved by several witnesses. That I admit; but it is not simply the fact of their meeting, upon which this is to depend, it is with what *intent* they met. Who proves that they met with an *intent* to overturn the constitution? Adams. Who else proves it? who says any thing more of the deliberations than Adams? no one: therefore it rests solely on the testimony of Adams—that is the first overt act. The second overt act is pretty nearly the same in substance; that they did meet and conspire to stir up, raise, make and levy insurrection, rebellion and war.—Mind, it is not the fact of their meeting which is the overt act, but it is the *intention* with which they met which is to be proved. Who proves the intention with which they met but one witness? Look through the series of witnesses called, and see whether you find another witness who proves the *intention* with which they met. The third overt act is, that they met with a *design* to assassinate divers of the privy council of our lord the king; that I admit is proved by more than one witness—distinctly proved; but you are next to ask yourselves, whether the overt act, when it is proved, furnishes an inference as a necessary consequence, that the overt act proves the levying of war and rebellion. I have an admission of the learned counsel, that to assassinate the whole privy council does not of itself amount to high treason.

Mr. Baron Garrow.—I understood Mr. Gurney to admit, that a conspiracy to murder a privy councillor is not high treason; but I never heard him admit, that an overt act (proved over and over again) to murder his majesty's ministers, is not to go to the jury for them to infer, whether that was with an ultimate design of deposing the king and levying war against the king. I do not wish to interfere with your argument, but I think you have misunderstood the admission.

Mr. Curwood.—Mr. Gurney admitted, as the law is, that to conspire to murder, or even actually to murder, the whole privy council, is not of itself a substantive treason.

Mr. Baron Garrow.—No man will understand, and especially when it is in the hands of the counsel for the prisoners, that there is the least impatience on the part of the Court; but

when you stated broadly, that you had an admission, I thought it right to call your attention to it, for the purpose of seeing whether there was such an admission. I hope you will not consider my interruption as inconvenient or improper.

Mr. Curwood.—On no occasion would I consider the interruption of his lordship as unkind; I have on too many occasions to thank him for great urbanity. I did not state, that it was not evidence from which you might infer another object, but I contend, that that being proved, you were not precluded from exercising your own judgment; that you were not bound up from considering, whether they had or not another object in view. The learned counsel for the Crown admitted, that of itself it was not high treason; and my argument is, that it not being high treason of itself you were not of necessity to suppose it was to be followed by high treason; you may, in your judgment, think it is good evidence—that there is something else to follow; or you may say, on the other hand, that there is no evidence that any thing was to follow. I put it merely as an argument to your understandings, and not as conclusive evidence.

The next overt act is varying only the terms of it; that they did procure divers arms and weapons to assassinate divers of the privy council; to which the same argument applies. I admit the fact; but I say, that having admitted the fact, it does not of necessity follow, that they had any other object in view. Then, the seventh is, that they conspired to seize cannon with an intention to arm themselves, and other false traitors, to levy and make war. You must take the whole of it together, not merely the conspiring to seize cannon, but for that particular purpose of levying war against the king. Why, perhaps they had no such purpose to levy war against the king; still it reverts back to the testimony of Adams the only witness who speaks to the purpose of their minds.

The next overt act is, that of conspiring to set fire to certain buildings; that I admit has been proved, but I deny the consequence. I say, they might conspire to set fire to buildings, but whether for the purpose of plunder, or for the purposes of levying war, is a matter for you to decide upon; and that does not yet appear in evidence, except on the testimony of Adams. Then comes the overt act, that they published divers proclamations; but there is not a tittle of evidence except that they published one, and that from the mouth of Adams. Then the next is, that they published a specific proclamation.

Mr. Baron Garrow.—Is it publishing, or preparing?

Mr. Curwood.—I beg your lordship's pardon, it is preparing. Then comes this specific proclamation. Now, I have argued before, that that proclamation is not at all in existence; it is a mere invention of Adams; but even

supposing that he speaks truth upon this occasion, what else is there to confirm him? it rests solely upon the testimony of Adams. Then comes the rest—an insurrection actually to levy war, that is, in fact, if I may so call it, a sweeping overt act; and the argument I have had the honour to address to you before, equally applies to this. That is the whole question, whether there was, or not, any design to levy war against his majesty.

Now, I believe I have submitted at least the leading points of the evidence to your consideration. I have not attempted to dilate much upon it, because in the exercise of the duty that I have to perform to these unfortunate men, I have thought it best to convey my meaning in as few words as I possibly could. I have not attempted any thing like declamation; I have confined myself to such arguments as have presented themselves to my mind, praying you to take into your consideration many others that must present themselves to your own; but, as I said before, I trust by my brevity I have not confused what I meant to say. If I have had the good fortune to state intelligibly those arguments I have presented, I can only conclude by imploring you to lay out of your minds all which has passed on former occasions, weigh deliberately and seriously before you condemn men to death upon the testimony of such an infamous witness as this man appears to be. At least be satisfied that he is confirmed by unsuspected testimony; and what I was going to pray, I know you will grant—Those amongst you who have pronounced verdicts on former juries, if you should, on a calm and dispassionate review of the testimony of this man, see reason to alter your former opinions, have the manly fortitude to do it; and do not, because without impeachment to yourselves in another view of the evidence you have come to another conclusion, think that conclusion binding upon you now. This is all I ask, and this I know you will readily grant.

EVIDENCE FOR THE PRISONERS.

Mary Barker sworn.—Examined by
Mr. Adolphus.

You are the daughter of Tidd, who now stands at the bar?—I am.

Do you know a man of the name of Edwards?—Yes.

Do you know a man of the name of Adams?—Yes.

Did Edwards ever leave any thing at your father's lodgings, or house?—Yes, he did.

How long before this dreadful affair in Cato-street?—About a fortnight, I think.

What did he leave there?—He left things; that I since have heard were grenades, and likewise powder.

Do you remember the grenades by their shape?—They were in a kind of cannister.

Was one of them considerably larger than the others?—Yes.

Who left that very large one?—Adams.
For what purpose did they profess to leave them? were they to remain there, or not?—Edwards asked, if he might leave them for a little while.

Mr. *Baron Garrow*.—Do you propose this as a contradiction of Adams, or as a substantive fact? I do not remember that you examined Adams to this.

Mr. *Adolphus*.—No; I do not offer it as a contradiction.

Mr. *Baron Garrow*.—I thought it might have escaped my recollection.

Mr. *Adolphus*.—No; there is very small chance of its escaping your lordship's recollection: were they to remain there?—No; they were to be called for again.

Were any of them taken away?—Edwards took them once away, and said he would take them to finish them, and he brought them back again.

How long was that before the Cato-street affair?—It might be about a week.

Were they ever taken away again?—They were taken away on the 23rd.

By whom were they then taken away?—By Edwards.

Were they ever brought back again?—There were some brought back on the morning of the 24th.

How long was that before the officers came?—About a quarter of an hour.

Do you know who brought them back?—No.

Did you see the person?—Yes.

Was he a stranger to you entirely?—Yes.

In about a quarter of an hour afterwards he brought them again?—Yes.

Was there a box, among other things, left in your house?—Yes.

In what state was that?—Corded.

Was that ever, to your knowledge, uncorded at any time?—No.

Was it taken away on the 23rd, or did it remain where it had been?—It remained exactly where it had been till the morning of the 24th, when the officers took it away.

What it contained you did not know till the officers came?—I do not know till this day.

Thomas Chambers sworn.—Examined by
Mr. *Curwood*.

Is your name Thomas Chambers?—Yes.

Where do you live?—At No. 3, Heathcock-court in the Strand.

Do you know the witness Adams, who has been examined here?—Yes.

Do you remember the day when the people were taken up in Cato-street?—Yes.

Did he, in company with any body, call upon you at any time before that?—Twice.

How long before?—About a month before, in company with Edwards.

What conversation had you with him?—They asked me (Edwards first), whether I

would go along with them; I asked them where.

Was Adams by?—Yes. He said, Why I was not such a fool as not to know there was something on foot; I said, no, I did not know there was something on foot. "Well, we are going to kill his majesty's ministers," says Adams, "and we will have blood and wine for supper."

Are you sure of the expressions?—Yes.

What else did he say?—Edwards replied, "By God, Adams, you are right; it shall be so."

Do you remember the evening when Adams was taken up?—No, I do not know about that.

The evening that the people in Cato-street were taken up, I mean?—Yes; I remember that nothing occurred to me that night.

Did Adams call upon you that evening?—No; he called upon me the Monday before that took place, and Edwards with him, with a bag with him.

What did that bag contain?—He asked me to let him leave it with me; I asked what it contained, and he said, only a few pistols and such like; and a man named William Tunbridge was in my room at the time.

Did you let him leave it?—I told them, I would not let them leave it, or any such things, and I never saw them afterwards.

You are sure they made use of those expressions about blood and wine for supper?—I am certain of it.

Thomas Chambers cross-examined by
Mr. *Gurney*.

What book were you sworn upon?—I do not know what book it is; there it is.

Nor care?—I never took an oath but once before I came here the other day; this is the third time; it is the prayer-book, I should suppose.

Do you believe in Christianity?—I do; I am a churchman.

And you always said so?—Yes, I never said to the contrary; I always believed in the Bible, and was brought up to the church.

And Paine's works perhaps you have read?—No, I never saw them.

Do you know the two prisoners?—Yes, both of them.

How long have you known them?—I have known Davidson since, I believe, about the time of Mr. Hunt's procession.

How long have you known Tidd?—I have not known him except in the trade.

You and he are brother shoemakers?—Yes.

How long have you known him?—I cannot say.

Oh yes, you can; half a year?—I cannot say.

Will you swear you have not known him a twelve-month?—Yes, I will.

Will you swear you have not known him nine months?—I cannot say pointedly.

Will you swear you have not known him six?—I cannot say.

Did you not know him at the time of Mr. Hunt's procession?—Know him?

That is all I ask you?—I did not, particularly.

Did not you know him?—I cannot say, not to swear to him, not particularly.

Do you mean to say, you did not know him as early as Mr. Hunt's procession into London?—I cannot say.

How soon after?—It might be at some of the meetings.

Meetings where?—In Smithfield.

Did you attend them all?—I did; every meeting that was held openly in the air.

You scorn secret meetings?—Yes; and there is not a man in England who can say I attended one, whose word is worth a farthing.

Did you carry banners?—Yes.

Whom did you go with?—With scores of people.

I know that; any of the prisoners who are indicted?—I cannot say but I might have walked with them in the procession.

I dare say you can give me their names without any difficulty?—There are some of the prisoners whom I do not know.

But there are some of them you do know; you told me before, you knew Ings?—Yes.

And Brunt?—And Brunt.

And Wilson?—By person.

And Harrison?—And Harrison very well.

And Bradburn?—I do not know Bradburn so well.

But you know him?—Yes.

Strange?—No; I do not think I know Strange at all.

Did you go to any of the Smithfield meetings in company with any of the persons that have been mentioned?—I cannot say: they might be there.

Did not you and Wilson go together?—No, not to my knowledge; he might be there.

What weapon did you carry to the Smithfield meeting?—None but the flag which I carried openly.

What in your pocket?—None.

Had you no pistol in your pocket?—I carried none, nor I knowed of nobody that carried none.

You told me you carried a flag at each of the meetings; how long have you known Thistlewood?—Ever since Mr. Hunt's procession.

Where have you seen him since?—He has been in my house repeatedly since, for I took home the flags afterwards; for he has been there to fetch them and distribute them to those who were to take them in the open air in the meetings.

Have you seen him at any other place since?—Yes; one Sunday evening, at the Black Dog, in Gray's-inn-lane.

Do you know the White Lion, in Wychstreet?—Very well.

Do you frequent it?—I have not done it of late; I used to do.

What is your number and section?—I have got no such thing.

You do not know of any such things?—I know of nothing of the kind.

What was the name of your society?—It was no specific name; they called themselves reformers, that was all.

Were Harrison, and Wilson, and Davidson, and Palin, and Thistlewood, all with you at the Smithfield meeting?—I cannot say that.

Was Thistlewood there?—I saw Thistlewood there when Mr. Hunt was in the waggon, and I was in the waggon; I was always in the waggon.

Was Davidson there?—I cannot say; there were thousands of people.

Will you swear you did not see Davidson there; he is remarkable in his person?—I can swear he was not there; that I did not see him, at least, when Mr. Hunt took the chair.

You were always in the waggon?—I do not think I ever saw him in the waggon.

I did not ask whether you saw him in the waggon?—There might be other people of colour there besides him.

Will you swear he was not there?—I do not think I saw him there.

At this time, when Adams and Edwards called upon you, about a week before the Cato-street affair, and told you there was a plan to assassinate his majesty's ministers, and Adams said, you must be a fool not to know what was going on—No, Edwards said that.

"Edwards asked me, and Adams being by, asked me too, if I would go along with them, that I was not such a fool"—I said, "go along where," and he said, "why I was not such a fool as not to know there was something on foot;" I said "No I did not know there was something on foot." "Well, we are going to kill his majesty's ministers," says Adams.

Adams said, "We will have blood and wine for supper?"—Yes; and then Edwards replied, "By God, Adams, you are right."

And you thought they were such ferocious monsters, they were going to commit assassination?—Yes; but I did not consider they would get fools enough to do it; I considered myself a fool, but not so big a fool as that.

But lest they should, did not you go and give information?—It never struck me; but the reason was, I never thought they would get any body to do such a foolish thing.

Keeping such company as you did, I should have thought you might have expected it?—I never heard a man say a word against his majesty's ministers, except those men Edwards and Adams, in my room, and a drunken man in an ale-house.

Mr. Baron Garrow.—What was the ridiculous thing that you thought so very preposterous, that thinking yourself pretty much of a fool, (I do not say that) you thought they could not get a fool big enough to do?—To go with Edwards and Adams; foolish enough to go and kill them.

You thought that so monstrous and absurd, no man would be found monster enough to do that?—Not to do that.

Mr. Gurney.—You never thought of the wickedness of it, only the folly?—I thought they would not be able to get any one to do it. You never heard any man say any thing against the ministers, except a drunken man?—Except in a newspaper.

And yet you attended the Smithfield meetings?—That was in the open air.

Will you now swear again, having attended all those meetings, that you did not otherwise than from these men and a drunken man in an ale-house, hear persons speak violently against his majesty's ministers?—Never, as to killing them.

I do not suppose they mention such things in Smithfield?—I never heard them say things harder than I have read in the public papers.

You told me, I think, before, that you first met with Ings at a shop near you, where public papers were sold?—Yes.

The Black Dwarf and Medusa and Republican shop?—You say so, not I.

You said so?—That that was where they were sold, but not I, I said, yes.

The little shop where they are stuck round close to your court?—Yes, and I will tell you all the books I read, and those are Cobbett's.

You cannot read worse?—I cannot think I can read better, for they have kept me out of all kinds of hobbles.

Mr. Baron Garrow.—You only read the works you have mentioned, and you apprehend you have been sworn upon the prayer-book?—Yes; I never read any thing but Cobbett, I had got plenty of them before.

And you apprehend you have been sworn to day upon the prayer-book?—Yes; so I apprehend.

John Bennett sworn.—Examined by Mr. Curwood.

Where do you live?—At No. 4, Little Park-lane, New-street, Mary-le-bone.

What are you by trade?—A bricklayer.

Do you know a man of the name of Hiden?—Yes.

Did he at any time call upon you, and ask you to accompany him at any private radical meetings?—Yes, he has.

Did he use those expressions, a private radical meeting?—Yes, he has, in my own house.

Has he endeavoured to persuade you to accompany him once, or more than once?—More than once or twice, or ten times.

Many times?—Yes.

What did he tell you was to be done there?—He did not tell me any thing was to be done; he only requested me to go with him, that I might sit and see and hear, and say nothing without I chose.

Did you ever accompany him?—No, I never did; I never moved to any meeting, either public or private, in my life.

Of course we do not bind you down to other meetings, but private or public radical meetings?—No, I never did to no meetings.

Mr. Adolphus.—I am now going to call evidence to Davidson's character, my lord.

Isaac Cook sworn.—Examined by Mr. Adolphus.

Where do you live?—24, Charlotte-street, Blackfriars'-road.

How long have you known the prisoner Davidson?—About six years.

In what situation has he been in that time?—About six years ago, he worked as a journeyman for me in the cabinet line.

Has he continued in that employ since or not?—I believe he has, but not for me.

Have you continued acquainted with him?—Occasionally he has called at my house, when he has wanted any wood.

In the way of business?—Yes.

What character are you able to give to him?—At the time he worked for me, he was a very honest hard-working industrious man, and he conducted himself as a journeyman ought to do.

Have you known sufficiently of him to speak of his character since?—No.

That character goes only to six years ago?—Yes.

Do you know of what line of life he had been in before he came to you?—I think I have heard him say—

Mr. Adolphus.—I cannot ask to that.

Robert M^r William sworn.—Examined by Mr. Adolphus.

What are you by profession?—An architect. Living where?—In Lion's-inn.

How long have you known the prisoner Davidson?—I knew him in the years 1800 and 1801, so far as from reading mathematics with him at Aberdeen.

Have you had any acquaintance with him since?—I have met him three or four times in the streets of London since; the last of which I think was in June 1816.

Mr. Adolphus.—I am afraid he has only to thank you for your good intentions: I cannot ask you as to his character eighteen years ago?—I should think not; I was rather surprised at his sending to me; it is so long ago since I have known much of him.

Stephen Hales sworn.—Examined by Mr. Adolphus.

What are you?—I keep a grocer's shop at No. 17, Bell-court, Gray's-inn-lane.

You appear on behalf of Tidd?—Yes.

How long have you been acquainted with him?—Fifteen months; during which time I never saw any thing in his conduct of what is now brought before the Court.

You never saw any thing treasonable, or which looked like conspiracy?—No.

He never invited you to any meetings?—No.

Did he appear an industrious and prudent man?—Yes, he was always at his work; or

when he had nothing to do, took a walk with his family, or reading.

He seemed a quiet well-disposed man?—Yes.

William French sworn.—Examined by *Mr. Adolphus*.

What are you?—A carpenter and undertaker, No. 18, Union-court, Holborn.

How long have you known Tidd?—Nearly three years; he was a lodger and tenant of mine.

What character has he borne in that time?—The best of characters; I never saw any thing wrong; I called every week for my rent; he appeared a very industrious and honest man; I never wished for a better tenant, and particularly punctual to his word.

Samuel Lands sworn.—Examined by *Mr. Adolphus*.

Where do you live?—No. 11, Charles-street, Hatton-garden.

What are you by business?—A boot maker.

How long have you known Tidd?—Turned of three years.

What character has he borne?—A very good one to the best of my knowledge.

As an honest and industrious man?—He always appeared so; Mr. Tidd has worked for me the whole of that time.

Therefore you have a good opportunity of knowing his character?—Yes.

He has deserved your good opinion?—Yes, he has.

Robert Wood sworn.—Examined by *Mr. Adolphus*.

What are you?—A tinman and brazier.

Where do you live?—At No. 5, Elliot's-row, near Lord's cricket-ground.

How long have you known Tidd?—I have no knowledge of Tidd; I know Davidson, and have known him upwards of three years.

What has been his character during that time?—He was a cabinet-maker; he has appeared a very sober industrious man.

Mr. Adolphus.—There are other witnesses to character but I will not call them, my lord.

Mr. Adolphus.—Gentlemen of the jury, the course of the arduous duty which I have undertaken on behalf of the unfortunate prisoners who are named in this indictment, or at least six of them, brings me now for the fourth time to address a jury on a case which has been laid before them, with the same circumstances (and except a few variations, such as particular incidents have required), almost verbally with the same proof; and, gentlemen, it is not only the distaste which arises from frequent repetition, but certainly in some degree it is that enervation of the mind which must result from frequent ill success, which makes me declare that I rise to address you under circumstances, peculiarly painful. That I have heretofore very much at length, and with great

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minuteness investigated these circumstances, that I have done so unsuccessfully, presents no topics to my mind either of consolation or of dismay, because I know that I have performed my duty according to the best of my ability, and I know, too, that if the particular facts of to-day should present to your minds reasons which have not occurred to the minds of any juries before, or to any of you who may have been on juries before, you would notwithstanding what others have done, or what you yourselves might have concurred in, give your verdict this day as if the matter were entirely new, and come to such a conclusion as the evidence shall require, without regard to what has been done before. But the enervation and prostration of mind I have described arises from this, that it is nearly impossible to tread the same ground again with the same confidence and vigour as at first; and it is impossible not to believe that that which has before failed in convincing must fail again, and not to feel that which is inseparably connected with ill success, a degree of dispiritedness which enfeebles the mind even where it feels deeply, unaffectedly, and sincerely.

My learned friend has stated, that he feels sensible that all has been said which could be said on the subject before us. I confess, retaining the opinions I entertained at first, I feel a perpetual jealousy of my own efforts, a perpetual distrust of the powers of my own mind, which makes me believe I must have omitted something, because I failed to convince. I fear, however, that I shall not be more vigorous than I have been in the introduction of my opinions, but must labour under all the inconveniences arising from lassitude and distrust of myself.

This case is laid before you for the fourth time, without any variation of facts, though with some novelty in respect to the manner of introducing it, and that is not to be wondered at, because a number of gentlemen highly polished and instructed, will each take a somewhat different view of any subject. My learned friend and myself had no opportunity of shifting our ground;—when I say shifting our ground, I do not mean to use that as a phrase of any levity with respect to my learned friends; but they have some advantage in presenting the aspect of this case, which is denied to my learned friend, Mr. Curwood, and myself, for we have had to labour up the same track without relief from each other. We have never varied the mode of statement of our argument; if we had, it would have been charged upon us in reply as evidence of the fallacy of our former arguments, and that we had taken to others still more fatal. I can only therefore repeat to you part of that which I have stated before, with such little novelty as the occasion may suggest. I can only resort to the same topics I have already used within your hearing, or at least within your knowledge; for you cannot be ignorant of that which all the town has learned.

It has been already stated to you, by my learned friend, that the conspiracy which constitutes the treason on the present indictment is proved mainly if not entirely, by the witness Adams, who is, as a witness, too infamous to demand implicit credit from a jury. The law with respect to accomplices and their confirmation has been discussed so often at the bar, has been so often, so clearly, and so forcibly laid down by the judges, that it is next to impossible to hope that any observation at this time can acquire much of your attention; but I take the liberty of remarking that it stands clearly as a rule of law, not to be departed from in practice, that an accomplice must be so confirmed that his tale must become credible—not merely credible in some parts, but that he shall gain credit while he is detailing the whole—by the credit you are induced to give to his veracity in those parts where he is confirmed by other witnesses; but the confirmation depends mainly on the manner in which he appears before the jury. With respect to some witnesses, a slight confirmation will produce credit; with respect to others, very strong confirmation will be required before they are believed. I am not saying in point of law (for it would be absurd and no man who had ever read a book of law would be able to say) that an accomplice is expected to be confirmed in every point of his narrative; for it must inevitably occur to every man's observation, that if he were expected to be so confirmed in every point, he might have been dispensed with, for the case could do as well without his evidence. Assuredly no man, from the attorney-general to myself, would ever, in such a case, bring an accomplice at all, and we would exempt the accomplice from cross-examination by bringing at once the man who would make his evidence unnecessary; but without going to that extent, I do humbly insist, that it is necessary that an accomplice, who comes to prove a crime, should be confirmed in something that is material to that very crime, and that it is not sufficient to bring confirmation merely to certain matters of fact drawing toward the same focus.

I will put a familiar illustration; we will suppose, that in any part of the country there existed any set of men, who had been the bane of the community, who had plundered and robbed roosts and orchards, till they had become marked by every one; supposing on any occasion one of the party were detected, and he turned witness against the rest; supposing the plans and circumstances were so laid that he was seen at this public-house with that person, at another situation with other persons; and supposing this accomplice had pointed out the place where certain implements, useful for some part of their project, could be found, and that they were found accordingly; but supposing he added to that, that the intention was not to commit those depredations which were pointed at by other witnesses, but that he fixed upon them a charge of burglary, an in-

tent to murder the master of the house: that witness being proved to be so bad a character, it would go very seriously to the jury to consider whether the certainty of being confirmed in slight, general, or unimportant particulars, had not encouraged him to the invention of a charge more atrocious, and to suggest crimes of a deeper dye than those which had really been contemplated. Suppose too, that there were a reward for one conviction, and not for another, when it was quite clear that there had been a plan to plunder orchards or hen roosts, to take away poultry or fruit, or to do other things which would be a subject of simple larceny, would it on the evidence of such a witness be believed, that the plan went to the unheard-of extent of robbing the house and murdering the family, more particularly if there was proof that that house was so well closed, and that family so well guarded, that those persons had no force or means to effect it, and must have run on assured and obvious destruction if they made the attempt? Gentlemen, I say, if that evidence, unsupported where it was capable of being supported, and unconfirmed except by particulars which were applicable to one case as well as another, were presented to you, would you not hesitate to pronounce the prisoners guilty of the higher offence? By this sort of parallel I wish the present case to be tried. Here is an obvious, known, avowed intention; it is that of wreaking vengeance, which some of those men were rash enough to believe had been merited by his majesty's ministers, on the heads of those ministers; vengeance repugnant to every sense of propriety from which a British mind recoils, but which does not amount (as I state from the admission of my learned friend) to high treason, unless it is taken as the overt act of a further intention; that is to say, to speak less technically, if the beginning and end of the plot of these men were to murder his majesty's ministers, to fire the town, to plunder the unfortunate objects of their vengeance, to do any other thing which were within that scope, they are not to be tried for it under the present indictment. These crimes are in themselves sufficient to subject the persons committing them to the highest and severest punishment; and if in the prosecution of their real intention they have committed other crimes, they can be reached by the law, without supposing that those acts form part of the plot charged in the present case; but unless they intended some or all those things which Adams has ascribed to them, namely, to depose the king, and to prevent his family from reigning, to seize the public munitions of the country, to establish a provisional government, which was to sit somewhere or other—unless they intended to seize the king's fortresses or palaces, and to levy war against the king, they are not guilty of high treason. That they did intend any or all of these things, you have from the mouth of Adams alone; and it will be for you to consider when we come to talk of him hereafter

how far such a man, unsupported in these respects, is to be believed because he is supported in that which is avowed, because he is confirmed in circumstances which apply more to the meeting in Cato-street the objects of which were precisely defined, but without the aid of any witness to confirm him in those other more material circumstances to which I have adverted.

It is said by my learned friend who addressed you upon this case, after going through the list of confirmations which he intended to produce, that if all other confirmations were absent, Cato-street itself is a confirmation. It is a confirmation if the assassination of his majesty's ministers is the end intended;—it is a refutation, if it is supposed that the seizure of the town, the subjugation of the million who inhabit it, and the capture of his majesty's subjects who should present themselves in its defence, were the objects; I say it is a refutation of that, even if it should be granted that plans of an ulterior nature were at one time entertained, of which, give me leave to say, I see no distinct evidence. Cato-street, so far from confirming, distinctly repels that inference; for the large number of ball-cartridges found in a box never was carried to Cato-street, but remained corded up, as it had been for weeks before, in the lodgings of Tidd, and there it was found on the following morning by the officers; so that these twelve hundred rounds of ball-cartridges, which were to produce those mighty effects, were all locked up in the arsenal, except a dozen or two which were found in Cato-street; so far, then, from this being any evidence of an ulterior intention, it shews that the whole quantity, even if these men knew what that quantity was which was in that corded box, was in perfect quietness; and no man ever seems to have thought of taking them to Cato-street, or of meddling with them at all on that fatal and miserable night.

Then Cato-street, so much relied upon, confirms that which is not denied, but rebuts that which is to be raised as a superstructure upon it. It is said of Adams, that he has no interest to come here and to falsify the truth, by over-stating that which he pretends to know, or that which he may fairly be conceived to know; that consideration depends mainly upon the character of the man, and upon the circumstances under which he comes forward, and to these I beg particularly to direct your attention; he is the only witness to prove the ulterior intentions of these parties; their plot, whatever it was, had been detected, and had failed; the persons of many of them were in prison so early as Wednesday night, and the rest, I believe, of those now in custody, as early as Thursday morning; examinations of them, and respecting them, had undoubtedly taken place in the meantime, and all they had disclosed was related, so that we may take it, from what appears in the cause, that these transactions immediately aimed at by the meeting in Cato-

street, namely, the attack of lord Harrowby's house (to which it is said Cato-street was particularly convenient, Cato-street being near to Grosvenor-square) were well known on Friday; then Mr. Adams is taken into custody, and on Saturday, after other examinations have failed, comes his deposition, extending the matter, which went only to murder and to conspiracy, to the full charge of high treason; which being in its nature a conspiracy, includes in one indictment all the parties, and makes the sayings of one in the absence of another evidence against him who is absent, and the distinct acts of each overt act applicable to the whole; therefore it is, that Mr. Adams on Saturday comes forward, and becomes a witness of great importance; whether he had contemplated that before or not, we cannot obtain a disclosure from him; we may form conjectures, in me they may be called mistaken suggestions, but if they enter into your minds, they may be effectual in giving a right character to the evidence, and a proper determination to the case.

Then let us see what Adams is, and what he comes to disclose; he has been described by my learned friend. And of all the men who have been characterized in court, Mr. Adams is the last person to complain. Is he a traitor to his king? my learned friend tells you so, and why? because Adams tells you so. Is he a traitor to the friends whom it appears by other evidence he had attempted to seduce, and who had intrusted him? his appearance before you shews it. Is he a renegade to the blessed faith, in which he had been instructed in his infancy, and on which he ought to have formed his conduct in life? he himself tells you so. But it has been said, and may be said again, he repents, and becomes converted and reformed; and nothing is so reasonable as that conversion which the moment of distress brings upon us, which the view of death forces upon us, and which the near approach of eternity compels us to embrace. It is observed by perhaps the best epic poet the world has produced, that the detection of hypocrisy does not belong to man, nor even to angels—that it is a privilege reserved by God to himself; most true is that observation; and therefore I shall be most careful in calling any man a hypocrite; but in the analysis of the human mind, I can only have recourse to human acts to determine what is real, and what a fallacious pretence; and this, with as much confidence as becomes me, I would press upon you; to my understanding, without attempting definitely to pronounce upon it, all the evidences of fraud, of guilt, and of hypocrisy, are upon this man, and not one of the marks of true repentance. Does a man, in truth, repent of a crime? he endeavours to make amends for it in the best way in his power; does he repent of deserting his God, and committing the sin against the Holy Ghost? he then, by contrition and humility, by self-examination and self-abasement, en-

deavours to make atonement for it, but not by the accusation of others, whom his example may have misled—not by making a sacrifice of the lives of others to save his own—not by tendering himself to kiss that gospel to which he has never been united—by receiving the sacrament again, by renewing his homage to his repudiated Redeemer, and soliciting peace with his offended Maker; but he would rather, if his profession of penitence were sincere, submit himself to the law he has incensed, than take the measure of betraying others; a measure suspicious in any hands, but which cannot possibly be pure in his.

I would not say this, were he a party without any apparent bias to the conviction of the individuals against whom he has appeared to give evidence, were he a party whose testimony had been consistent and uniform on all occasions; and, above all, were he a party whose evidence was in itself probable; but wanting all these circumstances, and standing self-condemned, then I do humbly insist, on behalf of these unfortunate men whose lives are assailed by his most corrupt and incredible testimony, that credit cannot be given to him unless he were better supported.

A man has been produced for the defendants, upon an answer of whom I have no doubt an observation will be made to you. On being asked, "On what book have you been sworn?" he says, "I believe on the common prayer-book." That such a mistake may have been made in the mind of a man who never was before examined in a court of justice cannot be unnatural, when it is one of the propositions laid down in our books on the law of evidence, that a swearing on the common prayer-book is just as binding on a deponent as if he had been sworn on the gospels, and just as open to punishment; there may have been therefore in his mind an idea of that kind. He is asked, "Have you read Paine's works, and suffered your mind to be corrupted by them?" "No, I never did read any of those books, and I never have renounced my faith." He is asked (I suppose it is a question of importance in this cause or it would not have been asked), When you knew of these infamous plots going on, when Adams, whom you have been called to contradict, and Edwards, who has never been called, told you this, did you go and give information before a justice of the peace? No, he did not. If there be any thing against this man from these circumstances (and I suppose there was by the way in which it has been pressed in cross-examination, and by the way in which some such matter has been most improperly mentioned elsewhere), it goes as much to the disadvantage of one as of the other. But the man is asked as to his private conduct, as it relates to parts of his private opinions; he tells you he has a drawer full of Cobbett's works; I wish his drawer were better filled. He tells you, he has known several of the prisoners, and that he has seen them at public meetings, but never at private. Does Adams

tell you the same, or has he been the chief mover in all their private meetings? and does he now come forward, at last, to be their chief accuser when he can make any thing by it, when he could have done so on the first occasion? Chambers carried flags where all the world could see them; Adams conspired in private, where none could see him; but he has this advantage, that all his victims being included in one sweeping indictment, he can come forward to give evidence against them, without a by-stander to confront, or an observer to contradict him. Chambers is asked, "Did you in any meetings you attended hear any thing against his majesty's ministers?" "No," he says, "I did not;" evidently meaning by that not, "I did not hear their public measures and their conduct arraigned and criticised very severely; but I never heard, except from the mouth of Edwards and Adams, any thing like a proposition to assassinate them; when I did hear it from Adams and Edwards, it appeared to me, no men on earth could be found fools enough to believe such a thing;" and indeed, gentlemen, though there were twenty men found fools enough, it would require a credulity which no man can possess, to believe that there was the further design of surprising the town, intrenching the roads, seizing artillery, besieging the Mansion-house, over-awing the military, and causing a great number of people to assemble together to assist in executing all this by the single efforts of a few miserable men, without wealth, without connections, without talents, without all or any of the means of influence.

It is said, this proposition is mainly supported by the evidence of Monument, who states that at a certain period arms were to be prepared, and that Thistlewood had said that all his friends were to be armed. But when was this said? before the meeting at Finsbury; before those meetings in which these parties mostly shewed themselves, it was said that they must go armed; why? because by going armed they would overturn the government? No, that never appeared to have been the intention of any of them; and you are left to infer that from such isolated propositions as Adams has given you. It is said they went armed, and no doubt they did at the time of the meetings, in consequence of the transaction at the meeting at Manchester, which they, and others who sympathized with them, denominated the massacre at Manchester; they thought that by going armed they might prevent their being put down by those who would wish to interfere with their meetings; it arose out of the feeling of the moment, and no otherwise.

If there was at that time a thought that any considerable number of the populace would join them for the purposes of external mischief, the meetings at Finsbury and other places which took place towards the close of the last year, and the events which took place there, must

have convinced them how impossible it was for them to succeed, unless they were too dull to understand, and too incapable even of mischief to be the subjects of a verdict; for it is known to all mankind, that in those meetings they were derided and pelted, their speeches treated with scorn, and their persons with insult; that it was apparent they could gain neither hearing nor favour. Then is it to be said, an insurrection is to be produced by the heads of the ministers being shewn on poles, the sight of burning houses, and the proceedings of a night such as never has been seen in London since the days of Richard the 2nd, when Wat Tyler paraded the streets with heads on poles? far from causing any thing like an insurrection, a violent resistance and the trampling to pieces of those atrocious men must have been the consequences; and those few who had not the courage or spirit to assist in trampling them down would have retired to their own houses, weeping and dejected, deploring the fate of those who had been murdered, and the state of their country, in the metropolis of which such a crime could have been transacted.

What confirmation have you that there was such an absurd plot, does the evidence of what was found in Cato-street confirm such a plot? Let the absurdity of the plot be evidence against that; and if it be said that a dozen of pikes could be of no use in the assassination of ministers, let it stand as parallel with that in the argument, that a dozen pike-staves and ten hand-grenades would have been of infinitely less importance in a general attack upon the town, and in the general subjugation of his majesty's loyal subjects, than they would have been in their superfluity in an attack on the minister's house, and on the persons of fifteen unarmed men. In wading between two dangerous masses of absurdity and contradiction to all the rules of probability and common sense, I should humbly submit to you, that that which leads to mercy and acquittal is the better course to take; and unless, on laying your hands upon your hearts you can say, we are convinced by other circumstances independently of the evidence of the infamous Adams, that there was a plot to the extent he has described; you will say, being able to make nothing of it, we have adopted the safer course, and have come to the conclusion that the murder of his majesty's ministers was in the thought of these men, and perhaps plunder beyond it; but there is nothing that leads us to believe, that there was any further intention to the extent this indictment charges, and which we must believe before we can find these men guilty of high treason.

It is said that the proclamation, or the supposed proclamation is also confirmatory of the original intention: that which you have heard respecting the proclamation, has come from the witness Adams, but it is supposed he is confirmed by the apprentice Hale; my learned friend has made many observations upon the

improbability and absurdity of that proclamation; I wish it could have been possible for my learned friend to have produced such a paper, or that an attempt had been made to produce it, because you would then have seen from the scholarship of Ings, the butcher, about which I cannot give you evidence amounting to any thing like the writing of such a proclamation, how likely it was he was to be the secretary to any thing.

Mr. *Baron Garrow*.—There is nothing importing that Ings had written it; the evidence is, that he was not even called upon to do the official act of putting his official name to it, but that it was done by the author of the proclamation.

Mr. *Adolphus*.—It was so, gentlemen; not that he wrote the proclamation, which he might have done in a very good fair hand, and yet that would have argued nothing as to his scholarship, but that he was put forward as the secretary of a provisional government; but it is supposed this proclamation was written three times over, and that the copies were to be posted near burning buildings, in order to excite insurrection throughout the town by telling the people that their tyrants were destroyed, and that a provisional government was assembled; no man knowing who or where they were assembled. Mr. Ings is named as secretary of this provisional government, and this is confirmed by whom? by the apprentice, who says, that on a particular day he was sent out to purchase six sheets of cartridge paper. Let me suppose there is a meeting of men for a dangerous purpose, and that there are men who, upon the very eve of the explosion of the matter, are disposed to make that of it which does not belong to it, or that any one of them wants half a dozen sheets of cartridge paper, and that one of them sends out to buy it; who can prove what use it was put to except the witness Adams himself and he gives an account of it which is altogether incredible; cartridge paper is the very worst material for such a purpose; one part of a sheet of cartridge paper has been found during the search, in the very apartment in which this proclamation is supposed to have been written, a plain proof that the sheets were not put to that purpose, because if there was any intention to write the six proclamations, they would have been all used; that evidence therefore, either rebuts the proposition that there was such a proclamation, or proves nothing respecting it.

But let us recollect this; all the proclamations in the world, to be of any use, would not have been in the pocket or possession of one man, because that one man could not have been at many places at the same time, affixing those proclamations, so that they might be read by different detachments; all the persons supposed to concur in this proclamation, except Thistlewood himself, were taken on the spot at Cato-street, and yet not one of those proclamations was found in the possession of

any one of them. Thistlewood was taken the next morning. It may be said he had destroyed that proclamation, but does his conduct exhibit any of that foresight which you would have anticipated? No, he is found with arms about him, and with cartridges in his pockets. Then is he to be supposed, nevertheless, to have had the precaution to tear the piece of paper which remained in his possession? When you examine into conduct, you cannot examine it with the supposition of such incredible inconsistency; you must suppose that a man who tore the proclamation would have thrown away the bullets, and that where the one remained the other would have been found, if it ever existed; but, I think, you will come to the conclusion, that this was one of the additions of the unbeliever Adams, who comes forward to save his own life, by fixing guilt upon others. The account which he gives of these proclamations, in order to give them in evidence in their absence is, "the last time I saw the proclamations" that applies to the three, which are given in evidence, the other I will not allude to "one was in the possession of Thistlewood, one in the possession of Ings, I know not what became of the third;" Ings then was the last possessor of one proclamation; he was taken without the power of making away with it, at the very spot in Cato-street, and yet no such proclamation, though they were immediately searched, was found, and, as I believe, no such proclamation so absurd and foolish ever had existence.

Mr. Baron Garraw.—It is not of much importance, but probably the gentleman who suggested that to you, had his mind filled with the former trial; I have not on this occasion, any evidence in whose possession they were; probably your own mind was going with my recollection, till it was suggested, certainly very properly, by the person who conceived it to be evidence in this cause.

Mr. Adolphus.—Gentlemen, I am obliged to his lordship for the correction; but you observe, as these trials advance we save time by not taking down the evidence each time, as considering the same facts as proved.

Mr. Baron Garraw.—Let it be considered as in the cause, it has been stated in one of the cases.

Mr. Adolphus.—Gentlemen, I have finished my observation; I said to my learned friend when he was examining to this matter, you have proved enough to put the verbal evidence of its contents before the jury, and you may proceed to that; that is literally how it happened. If I have said it appeared in this cause, that Ings was in the possession of any one of them, I have over-stated; but if Thistlewood was in possession of only one, the other parties, and probably those taken at Cato-street, would have been in possession of the others, and then if they were so in possession they would have been found upon their

persons; but there is not produced a trace, not only of those three, but of any one of the six; the three existing in the memory of Adams; that three others were written stands on his recollection; but there is not a scrap of those, or any circumstance shewing their existence, produced in proof.

I think I have stated already, that it appears from Monument's evidence, that the plan of arming took place before the meeting in Finsbury; that evidence will come to your minds, as evidence founded on some degree of hope, though not founded on any promise; and when I say that, God forbid I should taint any man with a supposition which does not belong to him; but we all know how much a little expectation will warp our minds; when I say his majesty's ministers did not make a promise to Hiden, I treat them not as ministers, but merely as English gentlemen, to which in every situation of their lives they must be entitled, even from their most violent opponents; I concede to them only that which has always been conceded to them, in saying, that they are noblemen and gentlemen of the greatest personal virtues and individual merits; to say that individuals in such situations would not give a man a promise before he had given his evidence, is to say no more than that they were not the most infamous of mankind, which God knows I would not suppose of them; it is the furthest from my heart; but to say that the witness expects something, is not to stigmatize him; but I say, he takes my reason with him, when he says that he has a right to expect that the service he renders to the individuals composing his majesty's government, to fourteen persons whom he has put upon their guard so as to save their lives, should entitle him to their individual gratitude, and that I hope he will receive; that I take into my consideration, not as making him come here as a decided witness of falsehood, and most of all, certainly not with the concurrence or even the connivance or any thing which may amount to knowledge of those about whom I have been speaking, namely, his majesty's ministers; but that it will have an influence upon the evidence he is to give, and make him more positive on points on which he may be doubtful, and to which he probably would not strain his mind, were it not for the hope he had previously conceived.

Although it has been denied by Hiden, we have attempted to prove that he has not been so much a novice in those matters as he represented, that he was not destitute of knowledge of radical meetings, nor quite guiltless of attempts to induce persons to go there. Bennett, who states he has never been in the habit of attending those meetings, tells you that Hiden did come, not only once, but ten times, to ask him to attend those radical meetings; but I will not disguise or conceal that the whole of the invitation went to this, "you may see and hear what is going on, but you need not join in saying any thing." I say that

shews that Hiden invited him to go, though he had denied it in his evidence; but it does not go to the extent of his having endeavoured to seduce another man into disloyalty; it goes to the extent of his having tempted him to a knowledge of that which he ought never himself to have known, that is the extent to which Hiden is contradicted, that is the state under which you are to consider his testimony, certainly in other respects uncontradicted, except from the improbability of his story, and except as to those circumstances, meritorious enough, to which I have referred. After all we fall back on that which has been so much treated of, the probability or improbability of this plot, in all its extent and bearings. On that subject I despair of saying any thing new, and when I mention one word upon the subject, I know by anticipation from the experience of three times what answer is given, and what answer I may expect in reply, when I say that I am not convinced by the answers I have yet heard, and probably shall not be by any I may hereafter hear. In private life, I do not profess to be more obstinate or incapable of conviction than another man; but in a cause, I do not feel that the improbability of conspiracy is at all apologized for or removed by evidence such as we have just heard, nor do I feel that it receives credit from the arguments which have been applied to it from any quarter. I do not say, nor did I mean to say, that because the accomplishment of the thing is impracticable, therefore the formation of the plan is not true; but when a witness stands forward to tell a most incredible story, it becomes every jury seriously to consider whether it is not the fiction of a man who has screwed his mind up to the purpose of making good a very extensive charge against others, in order to save his own life. I say that is the single purpose for which Mr. Adams must have invented some parts of this story, and for which he varies it from time to time, because if these men are to be charged with a dangerous conspiracy to assassinate his majesty's ministers, that is proved from other sources; if they are charged as principals in the murder of Smithers the Bow-street officer, that is proved from sources, when compared to this evidence, of purity in itself; is there any doubt of the attack upon the military who surrounded them? That is proved by that brave young officer, lieutenant Fitzclarence; but when we come to the matter of this indictment, it is necessary to bring him forward again and again, because without him those circumstances could never have been brought before you; he could have been confirmed at least by a man of the name of Edwards, but he is not confirmed by him; he could have been confirmed by others whom we have been asked to call for confirmation, but let Chambers be an example, who is not tainted with treason, and let us see whether, exercising a common discretion, we ought, if we were counsel in a case of forty shillings, to subject to cross-examination the persons who have been present, or are stated to have been

present at those meetings; had they ever been present, their cross-examination would have been such that I should not have chosen to have placed them before you; if they could state that they were never present, they might have been presented before you in a more favourable light than the witness Adams, but they could not have contradicted him in any particular material to this inquiry.

After the observations which have been pressed upon you by my learned friend, Mr. Curwood, I am really tired of going over these topics; that a plot of such extent and of such fearful importance should have been nursed in the minds, and carried almost to its completion by such men as these, is among the most incredible circumstances that have ever existed, even in these wonder-making times. I am told that similar cases have occurred in former days. I have been asked by the learned counsel for the Crown, is it credible that Mr. Thistlewood, a gentleman by education, and a gentleman in some of the movements of his life, could have consorted with persons in the low situation of the other prisoners, for purposes of plunder, or of the kind described in this indictment? From the grave solemnity with which the question was put I feared that I was misled by imagination, when I fancied that I was referring to the experience of the past. I thought my memory had failed, and therefore I took to my books, and there I found, as I had thought, that, in the year 1794, and for three or four years preceding, men of education and rank in life infinitely superior to Mr. Thistlewood had attached themselves to, and associated with men quite as low in situation as the lowest of those who have been brought before you on this occasion; and yet that juries were recommended to believe, and did find on their oaths, that other motives than those charged against these prisoners, had induced that concurrence of them together, and the accused were acquitted, upon those arguments and those grounds, of such treasons as were then laid against them. There is nothing so improbable or impossible, that the changes and chances of human affairs do not bring to our knowledge and to our experience; let me suppose (for I am not at liberty to enter into the private history of any man) that a man of good fortune at his outset in life had ruined himself by abandoned courses; that an estate on which a virtuous man might live contented, had been destroyed by gaming or other improper pursuits, that that man so reduced, finding himself under the necessity of associating with some persons, goes to those most ready to receive him, namely, the lower class, who will find themselves honoured by his association, and that out of his resentment there should arise a plan for satiating his vengeance, and for recruiting their means of subsistence; is it to be believed that a gentleman so reduced would revolt from such a plan as that, or would join in it? Or is it more easily to be supposed, that a man who had common sense, who had

seen foreign countries, who knew of what British society was compounded, should think by one band of twenty-five men, which it was hoped would be increased to forty, to take the metropolis, to change the government, to depose the king, and to establish a rule quite opposite to the feelings of the nation? This is so improbable, that all arguments sink before it into annihilation, I do not want, nor has it ever been my aim or my effort to add one circumstance of disgrace to the witness against me, certainly not to the client whose cause I have supported; but let me not be restrained by that feeling from giving the rational construction to that which is at present irrational. It is asked by my learned friend, is the resentment of these conspirators against Dudley earl of Harrowby, as such, or against the president of the council? It is asked, is their malice against lord viscount Sidmouth, or against the secretary of state for the Home Department? Is it against lord viscount Castlereagh, or against the secretary of state for the Foreign Department? Is it against John lord Eldon, or against the lord high chancellor of Great Britain? To all these questions, I return the answer which my learned friend who put them must naturally expect. It is against not the office, but the official man that the malice is directed; it is a misconceived rancour against those who have concurred in thanking the yeomanry who did that execution at Manchester, which they denominated a massacre, which made them think that they shewed their sympathy to the sufferers in that transaction, by bringing to signal, summary, and vindictive judgment, those whom they were wrought upon to consider as abettors in the supposed massacre. This appears to me a rational and tenable view of the subject, and toward this all the parts of the case naturally tend. A retreat into another country, would, no doubt, have been sought for immediately; and that towards that property might be secured, and that there might be a great preparation of means for the procuring that, I can easily conceive; but that this wretched band of feebly-armed ruffians should attempt to overturn the government, to hold the metropolis against any force, to take the Bank, and all the rest of the nonsense which has appeared in the testimony of Adams, I cannot believe; my mind is incapable of embracing it as the proposition of truth, and my reason rejects it as a foul and baseless fabrication.

I have now done with these subjects; I have done, I believe, the last duty of this kind that I shall be called upon to perform; I have done it, God knows, honestly and laboriously in proportion to the time that was allowed to me, with every wish in the world to do a real service to those who have confided their case to me; I have not attempted nor has it ever been my wish to assail the persons of his majesty's ministers or advisers, or the honourable persons engaged in the conduct of this cause, with any thing approaching to a reflection; if any such

thing has escaped me, I should be ready to apologize for it, for no such intention was ever entertained by me, however ill-chosen my expressions may have been. I am sorry for the importance which has been given to this case; this is not like those cases to which I have referred, when affiliated societies, supported by men of rank in literature, in the state, and in the country, were formed, not only all over the metropolis but all over the kingdom, and made themselves petitioners for foreign aid, by sending to implore the assistance of the regicides of France, who united with those who had said to God, depart from us, we will none of thy ways. It is not pretended that these poor creatures have ever sent out a letter or a missionary; it is not in my knowledge that one of them, unless indeed it was Thistlewood, could speak a foreign language; there is not a belief that any thing short of utter disgrace and contempt could attach to them at home; if, nevertheless, you believe they did form this project, and that the ultimate end or aim of it was to depose the king, or to compel him by force to change his measures, you will pronounce them guilty of high treason; and it is not for me to deprecate that which you consider to be justice; you are acting upon your oaths, and must find that verdict if the evidence makes out the case; I am sure you will do it with regret, seeing that a weapon so material to be exerted against those who would overthrow all our national establishments is brought to bear on persons so feeble and insignificant; but the greatness of the accusation will not pervert your understandings, however it may affect your hearts; but you will, in making up your minds to find that verdict, weigh and measure and sift every circumstance which has been laid before you, in order to inform your judgment and give it all the leaning you can (consistently with your consciences) in favour of the prisoners. I shall ever lament that part of the history of my own times, which records that such a conspiracy as this has been made the subject of so much investigation; but it will not I trust be without its advantages; the convictions which have taken place, and the conviction or acquittal at the present moment, will not be without their use, most especially if they destroy all the relics of that combination of which the seeds were sown from the year 1790 to 1794, and to which I am sorry to say we had something like an allusion in the cross-examination of the witness Chambers. He is asked to what section and number he belongs, though the man denies that he knew of such a thing; I see that the Crown have some information of the kind; I am sorry that that arrangement of former times is still in use, and I hope that any persons who may be ready to engage in the subversion of the government, will see from the examples before us, that if it were possible they should succeed, they would, like all inferior conspirators, be soon thrown aside as those who had done their part; but if they failed, exposed them-

selves, or were betrayed, that they would be left without support and without protection, without companions, and without commiseration, to suffer the miserable fate their conduct had brought upon them; it is fit they should know, and this trial will prove it, that men more depraved than themselves are only luring them to their destruction; that the more timid are only waiting to inform against them; and that he who will conspire against his king, will not hesitate to betray his brother conspirator whenever fear points out that as the road of safety; this important lesson, read through these miserable persons, will not be in that respect read in vain, and when they see how crippled and beggared it is possible for men under these circumstances to stand, they must hereafter remain at a fearful distance, if they have common sense, from all enterprises which involve such immediate danger, and drive them out of the possibility of receiving any thing like countenance or support. Above all, let them learn from the specimen of the witness Adams, that he who substitutes the writings of Paine, or of superior authors, in the place of the bible, will in the end shew himself as faithless toward man as he has shown himself faithless toward his Maker; that he who rejects the book of life, will be moved by nothing but the sordid hope of worldly advantage; and that where it becomes his interest he will betray even his brother; that he who renounces his fidelity in that book, shews himself so prodigal of his soul's health, that there is no believing in his political faith, or any other which can be substituted for it; and if there be among those who hear me, and who are wavering in their faith, or doubtful in their belief, by what such persons have been, let them take caution from the evident treachery of the man who renounced his religion for notions inimical to all good; from that excellent manual our church catechism let them learn to honour and obey the king, and all that are put in authority under him, and never forget the injunction to learn and labour truly to get their own living, and to do their duty in that state of life into which it has pleased God to call them. It is not the sacrifice of such a number of obscure individuals as may be found guilty, or as other juries may pronounce guilty; it is not the sacrifice of such men that can strengthen government, or do that which is alone the aim of our laws; the punishment is intended to operate not vindictively upon the offender, but beneficially upon survivors; and there is great danger when feeling is excited, of its being pushed too far in order to punish those who have been unquestionably guilty; but I trust you will not pronounce the prisoners guilty of high treason, unless you are convinced they have been guilty of it, because they have sought, through the road of crime, to effect that which they falsely considered as the dictate of patriotism.

I have nearly concluded my address to you; you will be the fourth jury who have pronounced

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upon this indictment against wretched men, having no means of defence except those which charity and a proper sense of professional duty have procured for them; what shall be the further views of government, it is not for me to divine, but I hope, if there be a road to mercy in any degree, that will not be left out of their consideration; I am sure enough will have been done for example; the further multiplication of widows and orphans will not be necessary, and as judgment has been conspicuous in the prosecution of those who are now before you and those already convicted, so will mercy, extended to others, contribute to the firmness of that government which can shew it. While I am pleading for mercy, let me not forget to entreat of you so much as can possibly enter your bosoms consistently with your oaths. I do not ask twelve firm-minded British men to adopt those sentiments of puerile pity, which might make you falsify your oaths and forget your God; but I entreat you most seriously, if you are not so satisfied as to rely upon the witness, Adams, to give the prisoners the benefit of the doubts to which his testimony is so abundantly subject. I know you will act honestly; I am sure you will act firmly; to all the juries who have preceded you the country is infinitely indebted, and the prisoners too, for the minute attention they have paid to every part of the subject. I have observed the same in you; I do not ask you to forget your oaths, but I implore you not to forget any circumstance which may strengthen the claims of mercy.

Mr. Baron Garrow.—William Davidson, the law of England, in its extraordinary tenderness for persons charged with the crime of high treason, allows to the person accused an opportunity of making full defence by counsel, and you received the great benefit the law has extended to you in that respect; but if, in addition to that which has been urged to the jury through your learned counsel, you wish to make any observations yourself, it is allowed to you to do so, and this is the proper and the only opportunity.

Davidson.—I am extremely obliged to your lordship for the opportunity you have given me; I would call your attention to two particular instances.—

Mr. Baron Garrow.—I wish you would do it so that I may hear every word; if you wish it, pause for a moment.

Davidson.—From my life up, it was always my study to earn my bread by honest industry. I had no friends in England, but I always laboured for my family; I have an extensive family, which is my only grief. As to the crime I am charged with, I lay my hand on my heart, and say that I am not guilty of it. With regard to the blunderbuss—I met with Mr. Williams, who is now gone to the Cape of Good Hope, and he had this blunderbuss very rusty; he asked me where I was going to, I

said after a job; I have been working for myself for five years, which is the reason I have had no master to come before you. I used to sell my goods at auction rooms, and when I saw the name of Welford put down in the list of witnesses, I meant to appeal to him as being the cashier for Mr. Denew, who sold my goods; he said, he had bought this blunderbuss to take to the Cape of Good Hope, but that he had taken it to a gunsmith, and found he would charge him more than it was worth for repairing it, and if I could get part of his money back, he would be obliged to me; I took the blunderbuss home, and kept it; it is not worth much; I cleaned it, and scraped the stock, and proposed to raffle it; I met with Mr. Edwards, whom I never knew till I dined at the Crown and Anchor, at Mr. Hunt's procession; that is the first time I ever went to a public dinner in my life; Mr. Edwards promised to be one of the members, and promised to get me a considerable number of persons more; there were to be twenty members, at one shilling each, and it was to take place the next Monday. I saw Mr. Thistlewood there the following Monday for the second time; I saw Mr. Adams and several others, but I did not know them again, except Mr. Adams and Mr. Thistlewood; they wished to commence raffling for the blunderbuss; I got up and said it should not be done without the money was tendered, for it was not my property, and it was my duty to be accountable for it; I received bad language; I found the company inconsistent with that I expected; I took the blunderbuss and went away; Mr. Williams called the next morning to know the result; he was disappointed, as he wished to lay out five or six shillings in the west end of the town; I said he might pledge it if he wished; he said he did not know any person in that end of the town; I said I knew Mr. Aldous, I had known him for years; he said, well, you pledge it; I said I would; I then told Mr. Aldous it was not my property; he said he would not have lent me more than five shillings but for knowing me. The vessel in which Mr. Williams is gone, is called the Belle Alliance. Mr. Williams told me, that he could not sell the ticket to his fellow passengers, they were so very poor, but would I accept it.

On the 22nd of February, Mr. Edwards said, he had been to see Mr. Williams, and that he had told him, that by giving me a trifle, he might get the ticket from me. I said, "he gave me the ticket; but if you wish it, you may have it;" he said, "Well, I am going to sell it, and shall get ten shillings more, but I should not have called for it, but for having a customer ready;" the same evening he called at my house again at eight o'clock; he said "Mr. Davidson, if you have no objection to going for this blunderbuss, you had better go as you pledged it, lest the man should object to my having it." I did not think he intended to forfeit my life; he told me where to meet him the next morning in Oxford-street, and I took

the blunderbuss under a gateway in Oxford-street to him; he said, "will not you walk in, and have a glass with a countryman of your's?" I said, "what do you mean by a countryman?" I was not much acquainted with him; he says, "a man of colour." I had an objection to going in, for though I am a man of colour, I have never associated with any of them. I was very well brought up. I found them all very ignorant; who this man of colour was I do not know. Mr. Edwards promised to meet me the next day, but that night I was apprehended.

Now, my lord, we will pass to the account of the sword. Going about my own concern, I met with a person I knew at Liverpool, of the name of James Goldsworthy; he expressed his surprise at meeting with me in London, and after inquiring about my family, I told him I was very badly off, and that it was very bad to be a master, unless he has full work, for that other masters do not like to employ him; he told me he had set up a business a few miles out of town; it was a pleasant walk, and he would employ me if I liked; I told him, with the greatest pleasure; I asked him what wages I should have; he said, what did I expect; I said, thirty-two shillings a week; he said, he would give me thirty shillings; he said, call at the Horse and Groom. I did not at that time know that Mr. Goldsworthy and Mr. Edwards were acquainted. I now know they lodged in one house. As the officer says, I stopped at the corner, but as to the habiliments I was in, I never had cross belts on; is it possible, that if they had been so conspicuous, Adams would not have seen them in the stable? however I went into the public-house, and did not see Mr. Goldsworthy; I went a bit of a walk, and when I came back in half an hour, I saw several persons passing backwards and forwards; I saw several men looking at me, but I did not see the person I was looking for; I went again and stood at the corner; at a little after eight o'clock I was going down the Edgware-road; but previous to that, the landlord asked me, whether I was looking for any particular person; "yes," says I, "a gentleman I appointed to meet me, but he has not kept his word;" I was going down the Edgware-road, and I saw Mr. Goldsworthy near Queen-street; he said, "I suppose you are tired of waiting?" "Yes," says I, "if it was not for an anxiety to get work, I would not have stopped so long;" he says, "go and get a pint of beer, I have to shake hands with a friend;" and he gave me a sword and a bundle; I said, "what do you want the sword for, are you going to cut my head off?"—"No, but we have many thieves in our part, and it is for my own protection." As I am to stand before God, I never meant any bad. I was passing the stable, I saw persons rush in, and very foolishly went in, and I was attacked; I ran away; I never cut at any one; I never had any belt on; I would never plead for my life only, for I have ventured my life fifteen times for

my country and my king, and how can it be supposed I would join wicked men, who would attempt to overthrow so well-founded a constitution as the British constitution, and from the little acquaintance I have had with any men, save those directly in my business, it is not likely that I should be in any plot. I do not mean to say that I was not apprehended in Cato-street; but I still contend, my lord, that the carbine was not in my possession directly nor indirectly; it was picked up at a distance, and brought to me, and I was asked whether it was not mine; I denied it, but another person said, "oh, it is surely his, why do you ask him?" I was carried into a chandler's shop; I never was in a public-house; and captain Fitzclarence cleared up that point, though one of the officers swore that I even addressed the people; and said, that the man who would not die in liberty's cause, ought to be damned. I was left in the custody of the officer who took me; and I asked captain Fitzclarence, whether he did not take me directly to Bow-street; what time had I then to address any persons, or to go into any public-house when I was a prisoner; even the landlord of the public-house I would appeal to, to know whether I was a prisoner in his house. I do not mean to say that an existing plot might not have been, but I pretend to say I knew of no existing plot; I was accidentally brought into Cato-street as I have laid my story; but I knew nothing of a plot for plunder or massacre.

If my colour should be against me which perhaps, gentlemen of the jury, you may suppose it to be, and think that because I am a man of colour I am without an understanding or a feeling, and would act the brute; I am not one of that sort; I would wish to wipe off those impressions from those learned gentlemen who have so prosecuted me. When not employed in my business, I have employed myself as a teacher of a Sunday-school, and in that capacity have remained; and I would draw your attention to a simple mistake—there was a person, a man of colour, nearly my stature, insulted one of our female teachers in the Walworth-road; I then lived at Walworth; and though this young lady was a teacher in the same school I was, she so far mistook the person as to make a complaint of me; I found some of them looked cool upon me, and I sent in a letter of resignation, consequently the whole committee waited upon me, and called me from my wife into the front parlour, and expostulated with me upon the impropriety of my conduct, and persisted in it; it struck me with such horror, that I had nothing to answer, but I determined to investigate it, and I sent my wife to the young woman to ask a little information; I traced out the person that had insulted her, brought him to the committee, and he acknowledged his fault, and she came ashamed to look me in the face, and hid her face, and offered me her hand. If any thing I could say would do away these impressions

I would proceed, but I would as lief be put to death, if I thought your lordship or the learned gentlemen for the Crown, believed I was that monster that for a moment I could harbour a thought to murder any human being directly or indirectly; if you believe that, I hope your lordship will not shew me the least mercy, for my conscience acquits me; I can stand before my God, and I will stand at his tribunal to assert, my lord, that I am not guilty of doing such a thing, nor deserving it. If your lordship will permit me to have a drink of water.

Mr. Baron Garrow.—Oh, certainly, take your refreshment, sit down and compose yourself, and address the jury again, if you desire it, when you are composed, there is no impatience on the part of the Court, take your own time. I would observe to you, upon that which you have said, that you may rest most perfectly assured that with respect to the colour of your countenance, no prejudice either has or will exist in any part of this Court against you; a man of colour is entitled to British justice as much as the fairest British subject that ever came into a court of justice, and will always be sure to obtain it, and this case will be decided upon the facts given in evidence; God forbid that the complexion of the accused should enter, for a single moment, into the consideration of the jury.

Davidson.—My lord, it is but very few words I have got further to say, for as to politics I never troubled my head with it. I have a family of very little children, and a wife that never earned a penny for me since I have had her; it is only the distress of my family I feel; were it not for that, I should quote a passage in Isaiah, "He was oppressed and he was afflicted, yet he opened not his mouth;" but when I think of the case of my family, for the love I bear my children, I should use the utmost of my power to prevail upon a British jury, if it were possible, to clear up those black charges which are laid against me. First of all, here is Mr. Adams, he can positively swear that he has not seen me in any warlike appearance whatever. I was down stairs when Mr. Thistlewood numbered his men; he said eighteen and two below; when he was asked whether I was by, he said no, I was down stairs, but my name was put down immediately the officer came up. The next witness, Mr. Monument, comes forward and says, that I addressed the congregation, and told them that any man that was afraid of his life might walk off, and that in a few minutes afterwards the officers came up; now your lordship and the jury must see there is some exaggeration of these things. I do admit I was in Cato-street, by passing through the street, but as to admitting any thing else, it would be against my conscience, it would be wrong in me to say that; I knew nothing of their plans; I now know that Mr. Goldsworthy was an accomplice of Mr. Edwards, they might be the plotters; but I did not expect that he would be that base

character, that having been a journeyman in a shop in which I was an apprentice he would have entrapped me. I have served my country, I have done all which an honest man can do; I have supported my family by honest industry, and I can appeal to fifty gentlemen I have dealt with since I have been master, that they never have known me to go to public meetings, except one meeting in Smithfield, as a common spectator. I knew nothing at all of these men till I found myself a prisoner along with them. I had seen Mr. Thistlewood, but I never saw him the night I was apprehended, till I was apprehended; if I had seen Mr. Thistlewood, and Mr. Edwards, it might have led me to suspect, but none spoke to me nor I to them; if I was one in their concern, being such a conspicuous character as I know I am from my colour, can it be supposed that I would stand in a gateway to be seen and identified above all others? It is not for me to say any thing further on my own behalf, my learned counsel, on the points of law have done me justice; and as for those learned gentlemen, the counsel for the Crown, I have nothing to lay to their charge; I admire the way in which they have done their duty, according to their judgment upon the evidences; if those gentlemen knew me better, or it was possible I could have shewn them my former conduct, they would not have pointed me out the character they have done. I never, my lord, have done any man an injury, but I have supported an honest character, for by an honest character I intended to live, and nothing but that; my family was all my society that I kept, neither politics nor laws ever troubled me; as for any thing further that I have got to say, it would be useless.

I would only call the minds of the jury to a few passages I have selected out for that purpose, if it would not be insulting to the Court; I would select this passage in the indictment, in which it is said that I had not the fear of God before my eyes, but was moved and seduced by the instigation of the Devil; now, my lord, I always had the fear of God before my eyes, and it was my constant prayer, and I always used those passages which I have read in some of Mr. Pope's writings:

"If I am right thy grace impart,
Still in the right to stay;
If I am wrong, oh! teach my heart
To find that better way!

"Teach me to feel another's woe,
To hide the faults I see;
That mercy I to others shew,
That mercy shew to me."

These were always my constant impressions, my lord, and those passages in the indictment may better be applied to those gentlemen who stand there to swear my life away, to the destruction of myself and my family; but here, in the Bible, it is said, "One witness shall not rise up against a man for any iniquity, or for any sin in any sin that he sinneth, but at

the mouth of two or three witnesses shall the matter be established." It goes on to the word which is above your lordship's head, "If a false witness rise up against any man to testify against him that which is wrong, then both the men between whom the controversy is shall stand before the Lord, before the priests and the judges which shall be in those days, and the judges shall make diligent inquisition; and behold, if the witness be a false witness, and hath testified falsely against his brother, then shall ye do unto him as he had thought to have done unto his brother; so shalt thou put the evil away from among you, that innocent blood be not shed in the land which the Lord thy God giveth thee for an inheritance." These things I would wish to impress on the jury's mind; I am a stranger to England by birth, but I was educated and brought up in England; my father was an Englishman and my grandfather a Scotchman; I certainly have a little prerogative for claiming to be an Englishman, being here from fourteen years of age; but I have not a friend in England, and it is hard that my life should be taken away, not knowing any thing of the plot made out against his majesty's ministers; the earl of Harrowby I knew for years, when I worked at Rugely, in Staffordshire, for Mr. Bullock. I have worked at his lordship's house, and for the regard I have for his lordship, from knowing him personally, I should have shuddered at the thought of taking his life; and if any man would have mentioned such a plan to me, it would have turned upon whether I should have turned a public informer, or have privately informed his lordship; but my conscience does not accuse me of any thing improper, for if I am to die, I can die with a clear conscience, that I know nothing of any assassination plot, nothing of any plunder or burning of the city, for those things I detest; I would get my living by honest industry, but I never was a man known to associate or keep any bad company.

I would have called your attention to several other witnesses, but they did not attend at the time they were called upon. All I have got to say is this; I hope the gentlemen of the jury will weigh the matter well in their minds, seeing it stands only between life and death; and should they harbour an opinion, that I am guilty of treason, though not guilty of murder, though that has been a crime charged—if they think I am a culprit that would stand here to acquit myself against the force of conscience, I am very willing to abide by their judgment.

Mr. *Baron Garrow*.—Richard Tidd, if it is your wish to add any thing to what has been urged to the jury by your learned counsel, this is the proper time for you to address them.

Tidd.—Thank you, my lord. The first thing I have got to say is, that I had the misfortune to become acquainted with Brunt about a month before Christmas, by his frequently going to see Adams, who lived next door to

me; our windows nearly join each other, and by that means we became acquainted; he frequently came up to my house, and during the Christmas holidays, he and I kept the holidays together; after the holidays, he introduced me to a man of the name of Edwards, whom I did not know before, though he challenged knowing me before. I went out with them at different times on the Sunday; it is well known that I every other day in the week worked fourteen, sixteen or eighteen hours in the day, and that I never went out but on a Sunday. Mr. Edwards and Brunt together told me there were certain meetings, which I knew of before, but I never attended any meetings. After this, acts of parliament passed which signified that these meetings were illegal, and that persons who went to them were liable to be prosecuted; but Mr. Edwards told me, he had got some connexions in a higher scale of life, that were determined that meetings of a similar description should be held privately; that he himself had got full authority to signify that to all those who were willing to meet to procure redress in parliament; I was satisfied; I thought there could be no particular harm in such meetings as those, and I went to the room taken by Ings, in Brunt's house. I did not see or hear any thing particular that day, but I was solicited to go another day, on a Sunday, the day spoken of here; and in the course of some appointment between Adams and some other persons in the room, I was nominated as a stranger to take the chair. There were certain propositions made on that Sunday, on which I declared positively, if that was their intention I would never attend such kind of meetings; I was fully determined not to keep company with them afterwards; but prior to this, Mr. Edwards comes up to me, and he says, "We have got certain materials, and Mr. Thistlewood's compliments, and he would be obliged to you, if you would let them remain here a day or two, till we can remove them." I told them I would not permit things of that kind to come into my place; with that answer he went away; on the evening of that day he brought that trunk, which you have there, and afterwards, when I saw him again, says I, "why did you bring that, when I positively said it should not come into my place?" he says, "it is not material, we only want it to stop a day or two;" then on the Sunday, as I before observed, I went to this meeting, where, as I have said, these propositions were stated; I never went again, but on the Tuesday, Edwards and Brunt came up to me, and asked me, whether I still kept in that determination; I said, "yes, I did;" he said, "well, all those proceedings are entirely frustrated,—there is a union in Mary-le-bone, but for self-preservation every man is requested to go there with some implement of defence;" I told him I had no implement of defence whatever; "then," says he, "I have plenty,—for through those gentlemen who support me in calling such meetings

together, we can always get arms." He pulled out a pistol from his pocket, and said, "I am not without arms, for I have a stick sword," shewing it me; he left that, saying, "I will see you again;" in the course of that afternoon, he came up again, and says, "do you know where the meeting is to be held?" I said, "No;" he said, "here is a direction," and he gave me a direction, which I have in my pocket now; but I suppose the direction is not material. [*The prisoner handed in a small paper.*]

Mr. Baron Garrow.—Do you wish the contents of that paper should be stated by the officer?

Tidd.—No, my lord, it is only the direction that Edwards gave to me where the meeting was to be held.

Mr. Baron Garrow.—Do you wish it should be read?

Tidd.—Yes, my lord.

Mr. Baron Garrow.—"Horse and Groom, John-street, Edgware-road."

Tidd.—During Wednesday, my lord, while I was out, I went to shops for work, and Brunt came up; and while they were there, I came home, and Edwards brought up a brown paper saying, you must bring this paper up to the meeting, for all those things that we have will be wanted, in case of a revolution taking place in this country, which is very likely in the course of a very little while, for the people are very dissatisfied, and very numerously dissatisfied in the country; you must bring this to the club in the evening; and Brunt observed, that he had several different acquaintances that were coming to the same club in the evening, and as I should be at work late, he would give them notice that they should come along with me; my lord, about seven in the evening, I left off work, and no other came than that young man Monument; I went up, according to their directions, to the Horse and Groom, and I do declare before you, that I never specified nor ever knew any thing about any cabinet dinner, or any thing of the kind; it was never mentioned to me; I hope, my lord, you will excuse my vulgar ignorant way of expressing myself.

Mr. Baron Garrow.—You have no apology to make upon that scale; whatever you say, and in whatever language and manner, will be attended to.

Tidd.—I went with Monument up to the place, expecting to go to the Horse and Groom; I met a man, whom I did not know, and he introduced me into this stable; I had not been there for ten minutes, before I was taken by the officers; that is the matter, my lord, I assure you, as nearly as I can recollect it.

REPLY.

Mr. Attorney General.—Gentlemen of the jury, painful and irksome as is the task I have now to perform, and tiresome, at least to many

of you, as must be the repetition of a narrative already told, of arguments already stated, and of observations already made, yet I am sure you will feel with me, however irksome that task may be both to myself and to you, that in a matter of so much importance, not only to the prisoners at the bar, but to the public at large, no time devoted to the fair investigation of the case is mis-employed; and in the few remarks I shall feel it my duty to address to you, my only endeavour will be to bring back your recollection to the real state of the evidence as it now stands, and to direct you to those points upon which, as it appears to me, the verdict you are to pronounce must ultimately depend.

It would be an idle waste, indeed, of your time, if I were to delay you by any laboured observations with respect to the law of this case. Little discussion has taken place upon that subject by the learned counsel who have addressed you on the part of the prisoners; and I may state to you, without hazard, that if the acts charged upon this indictment, as establishing the treason imputed to the prisoners at the bar, are substantiated to your satisfaction, the crimes alleged in the different counts of this indictment, at least in some of them, has been completely proved. The charge, divested of all technicalities, is simply this,—that the prisoners at the bar, in conjunction with others, had formed a plan to overthrow the constitution of this country; that, in furtherance of that plan, they had held those consultations, and had provided those means, and had contemplated that assassination, about which you have heard so much; and the only question for you will be, whether these acts have been made out, or not; because, if they have, they at once prove that these men have been guilty of compassing to depose his majesty from his imperial dignity, and of conspiring to levy war against him to compel him to alter his measures and councils.

My learned friend who sits by me, in introducing this case to you, told you (and I must beg leave to repeat the observation), that in a charge of this nature it is impossible to prove to the full extent the nature of secret deliberations and conspiracies, but by the testimony of one who has engaged in them. He stated to you, that in the examination of the testimony of such a person, you should exercise considerable jealousy and caution, and that unless you find him confirmed by other testimony, against which no imputation can be raised, you will not be advised by the Court to find a verdict of guilty. Almost the whole of the able addresses which have been made to you by the learned counsel for the prisoners has therefore been directed to the examination of the testimony of the first witness Adams. They have submitted to you (but I beg leave wholly to differ from them) that the case, as far as it relates to the charge of high treason, rests solely upon his evidence; that it does not so rest, I am sure I shall be able to satisfy you, if at present you entertain any doubt upon the subject, when I

come to examine the other parts of the case; but, for the present moment, I will confine your attention to the testimony which he has given, and to the confirmation which it has received. In the discharge of the painful and anxious duty which my learned friends had to perform in the defence of the prisoners at the bar, they have of course kept all circumstances of corroboration out of sight, feeling that when once brought under your review, they must satisfy the most sceptical mind of the truth of the testimony of Adams.

Before I come to the confirmations, let me consider for a moment some of the objections which have been urged against his testimony. That he is an accomplice, that he has participated in the guilt of the prisoners at the bar, I fully admit; but it is said he is unworthy of all credit, because, on his cross-examination, he has confessed to you, that for a time he had been led astray by those pernicious publications which have been too successfully circulated, and that he had withdrawn his belief from the Christian religion. Gentlemen, to what cause does he ascribe that unfortunate lapse of faith? Sorry am I to state, that, by the evidence, it appears that he owes it to the conduct of one of the unfortunate men now standing before you; for Adams tells you, that it was Tidd who furnished him with those publications which, for a time, sapped and undermined it. Do not let that circumstance operate more than it ought against the prisoner; but you cannot forget that the fact has been proved to you; and if Adams has erred from the path of the true faith, I am afraid that you will be obliged to attribute his offence to the unfortunate man at the bar.

It is said by my learned friend, that it is quite incredible that one who has so swerved from the belief which he professed should, in the moment of calamity and distress, have discovered his error, and have returned again to the Christian faith.

I see nothing improbable in it; on the contrary, it is our daily experience that it is in the hour of affliction that the mind is most strongly impressed with the sacred truths of religion; and I for one, can readily believe that after his escape from the appalling scene in Cato-street, during the days of seclusion, when confining himself to his house he endeavoured to elude the vigilance of the police, this man reflected seriously on his past conduct, and on his providential escape, and began again to feel the force of those doctrines which folly had, for a moment, obliterated, and returned to that faith in which he had from his infancy been educated; but whether that be so or not, he tells you that at present his mind is impressed with the belief of the Christian religion, and that he acknowledges the solemn sanction of that holy book on which he has been sworn to give his testimony.

Let me ask you what contradiction has been given to his evidence; one has been attempted by putting Chambers into the box, but I do

not find that his evidence is brought under your consideration by my learned friends, for they felt, that after his cross-examination, it would be a vain attempt to impose on the credulity of twelve honest and intelligent jurors, by endeavouring to persuade you to think that that man told one syllable of the truth.

I pass over Chambers's acquaintance with many of the prisoners, his attendance at the Smithfield meetings, and other circumstances of that nature; you recollect that (but I must call your attention to a part of his examination) he was asked on what book he was sworn; he told you that, instead of that sacred volume on which alone a person in a court of justice in this country is to be sworn, he believes it was the Prayer-book. My learned friend who last addressed you, feeling the effect this disclosure was likely to produce on your minds, has vainly attempted to get rid of it by saying, that in some work which he has read, but which I was never fortunate enough to meet with, it is laid down that an oath taken on the Prayer-book is as valid in a court of justice, as one taken upon the New-testament.

Undoubtedly if a Prayer-book contains the four Gospels, such an oath is binding and valid; but it did not appear that such was the conception of the witness; he thought that he was sworn upon the Prayer-book alone; but pass that by—what is the account Chambers gave of the conversation he stated to have passed between himself and the witness Adams, and a person of the name of Edwards? He says, that a few days before the affair in Cato-street, they came to him, on a very slight acquaintance, and at once asked him to engage in a plan to assassinate all his majesty's ministers, using language which I will not repeat to you, expressive of the exultation and triumph they should feel after that act had been completed; and yet that man, Chambers, with all this information imparted to him, buries it in his own bosom—lays it before no magistrate—makes it known to no individual, and it is not till this day that any communication upon the subject has ever escaped his lips. Can you believe such testimony? He unblushingly tells you that he felt no horror at the project. If he had felt as he ought upon such a scheme being communicated to him, I ask you whether it is credible that he should have kept such a secret in his own breast, and not have imparted it to a magistrate, or to some of those noblemen and gentlemen who were to be the objects of the assassination which Adams and his companion meditated. He does no such thing, and therefore, without delaying you longer on his testimony, I confidently expect, as the conversation is altogether denied by Adams, that you will have no hesitation in dismissing from your minds the whole of the evidence of Chambers.

I do not find in the course of the addresses of my learned friends, that they made any other observation on the manner in which Adams has given his testimony, or pointed out any

other supposed contradiction in the case. That being so, let me shortly call your attention to the story which he narrates, and to the manner in which he is confirmed in every part of it. It has been said by my learned friends on the other side, and they have argued upon it at considerable length, that though they admit Adams to be confirmed in some facts, nay even to the extent of the plan of assassinating all his majesty's ministers, they contend, that beyond that point there is no confirmation whatever, and that all he has told you of any ulterior views is fiction and invention. Now let me ask you in the outset, what possible motive, what interest has Adams to add to the guilt of intended murders the crime of high treason? It is said he is an accomplice—an accomplice in what? Would it not have been sufficient for him, when he was apprehended, and when he declared the whole which he knew, to have said, it is true I am an accomplice, it is true I was in Cato-street, and that I was embarked in a conspiracy with Thistlewood and Ings; but criminal as we are, though our plan was to assassinate his majesty's ministers, it was there to end. According to my learned friend Mr. Adolphus, the only motive he could have would be to destroy his own credit altogether. Let this remark, if you think it deserving of consideration, weigh upon your minds in determining upon the credit of Adams. The admissions of my learned friends, admissions not improvidently made but extorted by the facts in the case, place the plan for the assassination of his majesty's ministers beyond the reach of doubt. But the counsel for the prisoners say, that there the confirmation ends; give me leave to inquire, if that argument is well founded (and I put it seriously to my learned friend) what proof is there even of the plot of the assassination, except the preparations and the meeting in Cato-street? They have no other evidence than that of Adams on which to found the admission they have made, and shall not his testimony be admitted to prove the ulterior purpose these conspirators had in view; if it is credible in one part, it is to be believed in all its parts; if it establishes the plot of assassination, it equally supports the conspiracy to overthrow the government.

Adams states to you that a room had been hired by these men, in the house in which Brunt resided, for the purpose of holding their consultations, of devising their plans, and of preparing the means of executing them. Is that fact true, or is it false? It is proved to be true by Eleanor Walker, Mary Rogers, and another witness, whose credit has not been attacked, I mean Hale the apprentice of Brunt. You will recollect the pretence under which it was taken; it was, that it was to be a lodging room for Ings, and he said that he would bring his furniture into it; no furniture was ever brought in, and the only uses made of it were meeting there, and preparing the mischievous and destructive instruments you have

seen. I may here observe, that it has been argued by my learned friends, that the direct purpose for which it was hired, is proved only by Adams; the three witnesses I have introduced to you, shew that his testimony is true in that respect; the facts in the case corroborate him; no one ever lodged there; the only persons who resorted to it were the prisoners and others implicated in this conspiracy, and the only things found there were such as were prepared for, and are well calculated to carry it into execution.

There are other facts in which he is confirmed by Hale, I mean as to the meetings in that room, and the persons attending those meetings; he tells you, that on the Saturday they had determined that a blow should be struck on the following Wednesday, and that therefore on the Sunday morning a meeting was to be held at Brunt's room, to elect a committee to devise and organize the plan; that meeting, Adams says, was larger than usual, and he is confirmed in that by Hale; Hale has informed you it was the largest meeting he remembers, and was attended by upwards of twenty persons: the confirmation does not stop here; what did they do in that room? you remember Adams tells you, that a number of staves were brought there, green sticks for the purpose of being prepared to receive pike-heads; that Bradburn had been employed to put on the ferrules, and that he did not perform the work properly at first, having weakened the ends of the poles so much, that it was necessary to saw them off, and put on larger ferrules; Hale heard at times noises, as if there was sawing and hammering in the room, and he saw pike-staves there. He is confirmed in another singular fact; Adams must have been more than a prophet if it did not really take place. You recollect that at a meeting on Tuesday the 22nd February great agitation was excited, in consequence of Adams having communicated to them something that had occurred between Adams and Hobbs of the White Hart, from which Adams concluded that their schemes were not altogether unknown to the police; Brunt, to satisfy their doubts, and to ease their minds, proposed that on that evening a watch should be set in Grosvenor-square to observe lord Harrowby's house, to see whether any soldiers were introduced into it, concluding, that if no such thing took place, they might be sure their plans were undiscovered, and they might proceed with security; the watch was set, and the first men to perform the duty were Davidson and another, who were to be relieved by Brunt and Tidd. Davidson, with his companion, were to take their stations at six, and continue till nine. The watchmen of the parish have been called to you, and they proved that on that evening they saw a man answering the description of the prisoner Davidson, and another person with him, lurking about the square between six and nine o'clock. You remember that in consequence of Tidd having to com-

municate with some person who was thought to be essential to the success of their plans, he was on that evening prevented accompanying Brunt, and Adams was fixed upon to supply his place, and that he accompanied Brunt at nine o'clock to Grosvenor-square. He states that he went there with Brunt; that, after watching for a short time, wanting refreshment, they went to a public-house at the back of lord Harrowby's house, and that there Brunt played at dominos with a stranger. You have the very person, Gillan, who played with Brunt, produced to you. Then Adams is confirmed in all he has told you as to that part of the transaction. It is impossible he should be confirmed in any other manner. Brunt is a prisoner, who has been already tried; he could not be called. The only person who could be brought to corroborate the testimony of Adams was the young man who met him and Brunt at the public-house. The watchmen confirm him as to persons being seen in Grosvenor-square; his evidence is therefore supported, in this part of the case, beyond the possibility of contradiction.

His narrative is shown to be true in another particular. He informs you, that as they prepared their arms they thought it unsafe to keep them all in the room in Brunt's house, and that the house of the prisoner Tidd, was considered to be a fit dépôt for them. If confirmation of this part of Adams's evidence were wanting, it has been supplied to you by the unfortunate young woman, the daughter of Tidd, who has been called; for she has proved to you that hand-grenades and other instruments were, from time to time, deposited in her father's house; that the box produced to you, containing the ball-cartridges, had been there for a fortnight before the affair in Cato-street; that some of those things were taken away upon the very morning of the 23rd of February, and that some were brought back on the following morning. It was a natural thing that some of those instruments which were lodged at Tidd's should be removed on the morning of Wednesday to Cato-street. It is an occurrence to which Adams did not speak, but Mary Barker has proved it.

The next confirmation (and a very remarkable one) is given of what Adams states to have taken place in the afternoon of the 23rd of February, on his arrival at Brunt's house; while he was there, Strange and another person, whose name he does not know, came in, they were engaged in flinting their pistols, and finding themselves likely to be observed where they stood, they retired to the room taken by Ings. It was impossible for Adams at the time he told you that, to know that he should be confirmed; it was not a circumstance that he was likely to invent, inventing it might have subjected him to contradiction. Hale tells you, that on that very afternoon he saw Strange and another person flint their pistols in Brunt's room, and afterwards withdraw into the back room. That is not all, Adams informs you

that afterwards upon the arrival of Thistlewood and the other persons on that afternoon, and before they proceeded to Cato-street, Thistlewood was desirous of writing certain proclamations, which were to be exhibited in different parts of the town, in order to rouse the disaffected to join the standard of revolt; he states to you, that there not being any paper in the room fit for the purpose, he suggested that they should be put upon cartridge paper, and Brunt was requested to procure some. Hale was on that afternoon sent out by Brunt to purchase six sheets of cartridge paper; he brought them to Brunt, who carried them into the room where Adams says the proclamations were prepared. Recollect also what Adams tells you occurred upon that occasion; three proclamations were written by Thistlewood, when he became agitated and could write no more. Hall was requested to assist him, but refused. Thistlewood then desired another to do so, who at first declined, but at last did write one, the contents of which I will not state to you, because they are not properly in evidence. See then, how far Adams is confirmed, and see still further how he might be contradicted, if his account were not true. My learned friends admit, that the cartridge paper was purchased and taken into that room, but they contend that the contents of the proclamation rest on the credit of Adams alone. Now he is not only confirmed as to the fact of the cartridge paper being sent for, but also as to a part having been used. Hale states that there was some cartridge paper left in the room, but not the whole he had brought; I do not recollect that he specified the quantity. Now let us consider how he might have been contradicted. Hall was there. Hall is a person whom it was in the power of the prisoners at the bar to produce before you. It is said Hall is an accomplice, and that by bringing him forward as a witness, he would have been exposed to destruction. If he be an accomplice, and this fact took place, undoubtedly he would have been placed in jeopardy, but then my learned friends must assume that what Adams has sworn is true. Then undoubtedly if Hall were produced, he must confirm him; but their supposition is either that Hall was not there, or that the proclamations were not prepared; if Hall were not there, he might have been examined to prove so; if he were there, he might have been called to shew that what Adams has sworn is false, and that the proclamations he speaks of were never written. If Hall had been made a witness, and any questions had been put to him by the counsel for the Crown, to implicate him in the conspiracy, my learned friends know extremely well that he might have refused to answer, that he might have said I am not come here to criminate myself, but to prove certain facts; I have a right by the law of England to protect myself, and not give evidence which may involve me in crime. Hall is not called, because being there, he must have stated, as

my learned friends know, that the proclamations were so prepared and written by Thistlewood. His absence, therefore, corroborates the testimony which has been given to you.

Another argument has been used by the counsel for the prisoners; they say, Hall should have been called by the Crown; but see how ill that observation squares with the rest; they state that ten accomplices would not make the proof stronger; that one accomplice unconfirmed cannot be believed, and that therefore the case would not be advanced by calling ten such witnesses, unless their evidence was corroborated by unimpeachable testimony. Without adverting to Palin and the other persons, who also, according to my learned friend's hypothesis, are innocent, it is enough for me to have shewn, that there is one witness whom it was in their power to have produced, and that they have not called him; and I repeat, the absence of Hall confirms (if further confirmation were necessary) the story told by Adams.

What is the next matter in which he is supported? He tells you, that when he got to Cato-street, Tidd had not arrived: you will remember some alarm was expressed in consequence of his non-appearance. It appears that Tidd, after Brunt was gone, and after the rest of the party had set out from the lodgings for Cato-street, called at Brunt's house, and saw his wife, and she told him there was a pike-head and a sword in the cupboard, and asked him what was to be done with them. Tidd knew well how to dispose of them; he received them from her, took them into the back room, and left the house. You have no evidence of what was done with them afterwards; but Adams has informed you, that Tidd arrived at Cato-street some time after the others. Hale gives you the reason why Tidd was so late; he was at the lodgings as before stated after his companions were gone; and Monument also (who is called an accomplice by my learned friend) accounts for it. I will not at present detain you with the events in Cato-street, because in a future stage of the observations I shall be under the necessity of calling your attention to them; but as I have mentioned them, permit me here to observe, that in my humble opinion it was correctly said by my learned friend who opened the case, that if there were no confirmation of Adams's testimony, but that which the meeting and preparations in Cato-street afford, the charge upon this indictment is irrefragably proved, and that you can have no doubt of the plan of these men, and the design they had conceived.

There is another witness who I admit to my learned friend was an accomplice in the crime of these men, but undoubtedly not to the extent to which Adams is proved to be involved, I mean Monument. He came late into the scheme, and seems to have been kept in ignorance of the full extent of it until his arrival in Cato-street. You observed the

manner in which that young man gave his evidence; and I think if any thing depends upon demeanour, you cannot fail to agree with me, that his deportment entitles him to credit; he is borne out in every part of his story in which it was possible for him to receive confirmation; he told you the manner in which he was called upon at two several times by Thistlewood and Brunt, and afterwards by Brunt and Tidd, and in this he is confirmed by his brother, on whom there is no imputation of being concerned in the plot. The evidence of Monument affecting the prisoner Tidd is most important. He was visited by Brunt and Tidd, on the morning of the 22nd of February; they endeavoured to prevail upon him to become a party in their plans, and as at that time they had not procured the room in Cato-street, it was proposed that Monument should come to Tyburn-turnpike, where he was to meet the other parties engaged in the conspiracy. Brunt asked Tidd whether it would be safe to give the counter-sign to Monument; Tidd thought it would, and the word was imparted to him; but having before the next day procured this loft in Cato-street, Brunt came to Monument, and required his attendance at an earlier hour than he was able to give it, and in consequence of that, desired him to call on Tidd, and go with him to their place of rendezvous. The witness called at Tidd's; Tidd armed himself with a pistol, and then accompanied him to Cato-street. He tells you what passed after their arrival, and completely confirms Adams in that part of his account; he mentions the alarm which some of the party felt at their numbers being inadequate to their object; that that alarm was quieted by the address of Thistlewood, who told them they were too far embarked to recede, that their force was sufficient, that they had twenty-five men to oppose only fourteen or sixteen unarmed servants of lord Harrowby.

There is a third witness, moreover, who is neither an accomplice, nor one against whose character the least attack has been attempted. I allude to Hiden; and if all the evidence given by Adams were blotted out from the notes of his lordship, I submit, that Hiden's testimony, uncontradicted and unimpeached as it is, coupled with the facts which afterwards occurred in Cato-street, proves the treason charged upon this indictment. First consider the previous character of this man; next look to his conduct on this occasion; and lastly, weigh the evidence he has given, and how it has been borne out by the subsequent transactions in the case. Against his previous character there is not the slightest imputation; it has been attempted indeed to be proved, that he had not only attended radical meetings, but had invited Bennett to attend also. He admits, that he was present at two meetings of a society called the Shoemaker's club, but held for political purposes; and, unless he had attended those meetings,

Wilson most probably would not have thought he was a person to be trusted. He confesses too, that he did ask Bennett to accompany him; and all that Bennett has stated that can by any possibility affect Hiden is, that he asked him to go to a radical meeting, and Hiden does not recollect that the expression radical was used by him; you have, therefore, every right to believe, from his former and still more so from his subsequent conduct, that he is an honest man, on whose testimony you can place the utmost reliance. What interest had he to make any disclosure to lord Harrowby on the 22nd of February? My learned friend says, he cannot but think there is some expectation of remuneration operating upon the mind of Hiden, some hope of reward to be bestowed on him by those whose lives he has saved, for the testimony he has given upon the trial. Did any such motive influence him at the time when he made the communication to lord Harrowby? What possible interest could he have in telling that which was untrue? He must have been a prophet indeed if Wilson never imparted to him the plot in agitation. How was he to know any thing of a conspiracy to destroy the ministers of the king. Of hand-grenades, or fire-balls, or parties stationed in different parts of the town to seize the cannon? Of the intention to fire houses, to take the Mansion-house, and establish a provisional government there? He could only know these things from some conspirator deep in the plot, and he tells you that conspirator was Wilson. When it is argued before you, that there is no ulterior object of the plot proved but by the testimony of Adams, do my learned friends think, that Hiden's evidence has been erased from your recollection? If it be not, what ground is there to impeach it? Do not the facts which occurred bear him out? In Hiden, therefore, you have a witness neither impeached nor impeachable, and upon whose testimony I submit to you, you may safely rely. Then, with his testimony before you, let me call your attention to the occurrences that took place in Cato-street, and to the preparations made there, which are supposed by my learned friends, to have been merely intended for the assassination of his majesty's ministers. In this part of the case, I will take the opportunity of examining the reasoning of one of my learned friends upon a supposed conspiracy of an inferior nature, a conspiracy to rob hen-roosts, and commit burglary, and of an accomplice appearing as a witness and fixing upon his associates the whole crime. Compare such a case with the present. My proposition is, that the plan was, not only to murder his majesty's ministers, but to overthrow the government; the supposition on the other side is, that the sole object of the plot was the assassination.

To return to my learned friend's case; suppose, says he, the accomplice to state, and to be confirmed in many facts which shewed

that the intention of the accused was undoubtedly to rob the hen-roosts, but that there was no corroborating testimony to support him in his assertion that burglary was also meditated; could you, he asks, as a jury, find the prisoners guilty of a conspiracy to commit a burglary? certainly not. I freely admit it to my learned friend; but let me in return put this question to him, and let us see how he will deal with it; if in addition to preparations which were necessary to accomplish the first purpose of robbing hen-roosts, there were found crow bars, picklock keys, matches, phosphorus, and other implements, applicable only to house-breaking, what would my learned friend say to this confirmation of the accomplices account? Would he then deny that there was evidence to show that the prisoners were guilty of the greater offence?

What were the preparations made by these conspirators? were they such as were adapted to the sole purpose of assassinating his majesty's ministers, or were they of a nature calculated to effect more extensive destruction? were fire-balls, were pikes necessary? but, above all, were the twelve hundred rounds of ball found at Tidd's and the cartridges for loading cannon, intended to be used against my lord Harrowby's house, or his majesty's ministers assembled there? For what then was all this ammunition provided by these men? You find that their preparations were not only equal to the perpetration of the deed, which my learned friends suppose to be the whole plot, but fully adequate to the completion of those plans which Adams tells you they had in contemplation.

What was the object of assassinating his majesty's ministers? Had these prisoners and their associates conceived any particular feelings of revenge against the persons of those noblemen and gentlemen who compose the cabinet? Was private enmity the motive which compelled them to the commission of the bloody act? Or was not rather the blow aimed against these unoffending victims because they filled the ostensible characters of ministers of the Crown, and directed the government of the country? It is beyond human credulity to believe that this plot was intended to stop at the assassination of the illustrious guests of lord Harrowby; no reason can be assigned which could have operated upon the minds of these men to induce them to destroy at one moment fifteen individuals personally unknown probably to many of their murderers, unless you believe they had in view other and to them momentous objects, to the attainment of which the destruction of the advisers of the king was, in their wild and heated imaginations, considered a first and necessary step. You remember they were found armed. Yes, say my learned friends, they were armed, but the proceedings at Manchester had compelled them to protect themselves. But were these pikes procured in consequence of the Manchester transactions? Were the cartridges provided

for their protection when they held their meetings? It is only by the desperate circumstances of the case that my learned friends are obliged to have recourse to such an hypothesis; once believe the testimony given by Adams, and confirmed by Hiden, and the whole difficulty must vanish from your minds.

Why did they meet in an obscure room in Cato-street? why was that place chosen? It was doubtless selected because it was a convenient spot to proceed from to lord Harrowby's house. Were no other parties assembled on that night? My learned friends say there is no evidence of any attack at Gray's-inn-lane or the Artillery-ground. It is true there is not; and for this plain reason, the parties intended for the execution of those duties, were of course directed to wait till the blow was first struck in Grosvenor-square: but, though no movement was made, you have it in evidence, from Hale, that persons did assemble who were not destined to go to Cato-street; I allude to Potter and his companions, to a man of the name of Palin who was to head some incendiaries in the Borough, and to another band that has been mentioned, and which clearly was not meant for the seizure of the cannon in Gray's-inn-lane, as that task was assigned to Thistlewood and his followers, after they had perpetrated the bloody deed at lord Harrowby's. When the meeting had left Brunt's, it was thought that the room would be wanted for Palin's men; but it was afterwards determined to send them to the White Hart, and directions were given to Hale to do so. Hale tells you, that three persons came to his master's house, who were strangers, and that he desired them in consequence of the order he had received, to go to the White Hart, and they not knowing the way, he accompanied them. Potter afterwards called with others, to whom Hale gave similar instructions. Here you have the most direct evidence that many others were engaged in the plot of that night; recollect, too, the observation of Thistlewood, when fear was expressed of success; he said that they need not be apprehensive, for that there were numbers ready to join them, who waited only for some decisive blow to be struck. Need I refer you to the language of Thistlewood to Monument: "Great events are at hand; people are every where anxious for a change; I have been promised support by numbers who have deceived me; but now I have got men who will stand by me." The only answer given to this by my learned friends is, that the plot is incredible; that it was impossible it could be carried into execution, and that you are on that account to dismiss it from your notice. You are not to consider whether or not it could have been effected by the means these conspirators possessed. The only question for you to decide is, did they harbour in their minds the design imputed to them. If they did harbour that design, and acted in furtherance of it, then are they guilty,

however wild and visionary it may have been and however inadequate their means to its execution.

Look at their conduct in Cato-street, when they were apprehended; if they had assembled for an innocent purpose, why was the desperate resistance made to the officers? and here I cannot help making an observation upon the defence made to you by one of the prisoners at the bar; it is painful to me to do so, but justice absolutely requires it. Davidson has attempted to make you believe that he was not in the stable at Cato-street; that he was accidentally in the street in its neighbourhood upon that evening; and that he was by mere chance in possession of the carbine and sword which were found upon him. But how does the fact stand? The officers tell you, that on their entering the stable, they saw a man of colour, whom they believed to have been Davidson; that he was accoutred, that he had on cross-belts, and a sword by his side, and that he was walking up and down as a sentry. It was proved by Hiden that he saw him there; and Adams swears that Davidson was there, although he did not observe his dress, Davidson being engaged with some others in preparing the pikes. Munday, on the evening of that day, noticed him going into the stable, and on his stooping down, perceived under his coat pistols and a long sword; he saw him light a candle at an adjoining house, and carry it into the stable; but the proof does not stop there, he is actually pursued from the stable; he is observed to discharge the carbine, he makes a cut at his pursuer, and is at last taken with those belts upon him, and with the sword and carbine in his hand. It would be supposing you did not attend to the evidence, if I were to enlarge upon this topic. I have felt these remarks necessary, because he has in the defence endeavoured to make you believe that he was no party to this plot, and that he was only there by accident. My learned friend, finding that Davidson had been clearly proved to have been present at other times, at the meetings and consultations, and to have been active throughout the conspiracy, did not think it necessary to make any observations to you on that part of the case to which the prisoner has thus particularly addressed himself.

Tidd too was found in arms, and made a desperate resistance; he levelled his pistol at lieutenant Fitzclarence on his arrival at the head of his soldiers; a gentleman who had offered him no personal violence; and but for the interposition of that gallant man Legg, who stepped in to the protection of his officer, it is not at all unlikely that lieutenant Fitzclarence might have lost his life, as the unfortunate Smithers did in an earlier part of the transaction.

I have not troubled you with the particular facts affecting each of the prisoners, for I am sure, watching the proof as you have, you must have seen that they were both active throughout the whole of the conspiracy. Tidd was

present at their meetings; was chairman on more than one occasion; he approved of their schemes; and though in Cato-street he doubted whether they were sufficiently numerous to attack lord Harrowby's house, against the plan itself he felt no abhorrence, his only fear was, that their means were not equal to carrying it into execution; when his fears were quieted by the address of Thistlewood, all his objections were removed. The only real question is, that which is raised by my learned friend on the other side, as to the intention attributed to the prisoners by this indictment. I submit that it is proved not only by the testimony of Adams, but by Monument and Hiden, and still more by the facts themselves which occurred on the fatal evening of the 23rd of February, by the preparations in Cato-street, and by the ammunition found the next morning at Tidd's and at Brunt's.

If you entertain no doubt of this, your duty points out only one line of conduct, and you are bound, however painful it may be, to pronounce a verdict of guilty against these unfortunate men. It has been said, by one of my learned friends, that he laments that this plot has been made the subject of so much investigation; he thinks, or affects to think, that it was hardly worthy the attention of a court constituted as this is. That it has occupied so much of the attention of yourselves and others, is owing to the lenity of the law, which has enabled the prisoners to sever in their challenges, each of them having the privilege of objecting to a certain number of jurors. It therefore became indispensable, that their trials should proceed separately; and to that circumstance alone is it owing, that this subject has for so long a time occupied the attention of the Court. But the time consumed in this investigation ought not, and I am sure will not, operate upon your minds, or affect the verdict you are to pronounce. Though this be the fourth trial, yet, if the facts proved are, as they have been stated to be by the learned counsel for the accused, identically the same as those proved on the former occasions, the only question in this and each succeeding trial will be, whether the prisoners who stand at the bar for their deliverance are implicated in the guilt of this conspiracy. However we may regret the repetition of these investigations, it is absolutely necessary for the sake of public justice that they should take place.

With respect to the consequences that must follow these trials, and to which allusion has been made, they ought not to have, and I am satisfied will not have any influence whatever on your verdict. You are now to decide upon the fate of the two individuals before you; you will dismiss from your minds all recollection that any persons have been tried, and all knowledge that any others remain for trial. The only question you have to ask yourselves is, whether the evidence given satisfies you that the prisoners are guilty. If it does, I am sure you will feel no difficulty or hesitation in

discharging the duty you owe to yourselves and the public, in pronouncing that verdict which alone can satisfy the justice of the case.

SUMMING-UP.

Mr. Baron Garrow.—Gentlemen of the Jury;—The two prisoners at your bar are arraigned before you for that highest and most complicated crime which the community in any country can possibly have to animadvert upon, the crime of High Treason, involving in its probable consequences the crimes of murder, the destruction of property, and every other consequence which can follow from the perpetration of other single crimes committed by other offenders. You have been kept from your various abodes and occupations for a considerable time past, in order to engage in the investigation of the trials which have arisen upon the present indictment, a task devolving upon you as members of the community, painful in its execution, and attended probably with circumstances of a domestic nature not agreeable to you, but which you will not have any hesitation in performing according to the best of your honest judgment, whatever those consequences may be, in the persuasion, I am satisfied, that whatever may be the result of the present or any other trial entered into upon this occasion, it was indispensably necessary that these cases should be brought before the tribunals of the country, in order that the guilt or innocence of the persons accused might be ascertained, and if guilty, up to what extent the guilt had arisen.

The charge against the prisoners is that of high treason, stated in four several counts of this indictment. One of those counts charges the actual levying of war against his majesty, another, a conspiracy for the purpose of depriving his majesty of life, and if you are satisfied that the evidence which has been laid before you is in its material and substantial parts correct, if it brings home a satisfactory conviction to your minds, so that when you retire to deliberate on your verdict, you should say, I cannot as an honest man hesitate or doubt upon it, then it is my duty to tell you, that in point of law the crime of high treason is clearly and unquestionably established. I should have been prepared on the first trial to have told you so, in the language and on the authority of the greatest names that have adorned the legal jurisdiction of our country. Having been prevented by circumstances of a domestic nature from attending at the very commencement of these proceedings, I was deprived of the advantage of hearing the same thing better expressed by the first and highest authorities in Westminster-hall.

I now call your attention to two other counts to which, if you believe the evidence to be true, you will probably be of opinion that it more particularly applies. I mean the first, which charges that "the prisoners with other persons did compass, imagine, invent, devise and intend to depose the king;" and

the third, which charges "that they compassed, imagined, invented, devised, and intended to levy war against the king, in order by force and constraint to compel him to change his measures." The indictment, as the law of high treason requires, states that the purposes charged in these several counts of the indictment are established by certain overt acts, eleven in number—conspiring to devise plans to subvert the constitution; conspiring to levy war, and subvert the constitution; conspiring to murder divers of the privy council; providing arms to murder divers of the privy council; providing arms and ammunition to levy war, and subvert the constitution; conspiring to burn houses and barracks, and to provide combustibles for that purpose; preparing addresses to the king's subjects, containing incitements to the king's subjects to assist in levying war and subverting the constitution, and containing particularly the address stated in one of those overt acts addressed to the people, stating that their tyrants were destroyed, and that the friends of liberty were invited to come forward, as the provisional government was then sitting—and if these or any of these overt acts shall have been provably made out to your satisfaction—I use now the language of the law—that is, in other words, shall to your plain common sense and understanding, as you exercise it in the ordinary transactions of life, have been brought home to your conviction by evidence on which you cannot doubt, in that case it is your duty to pronounce the prisoners guilty; but if you entertain any serious satisfactory doubts of the truth of the evidence, or if it does not amount to proof of the facts charged in the indictment, you will do that which will be more agreeable to you, you will pronounce them not guilty.

The evidence has occupied a great number of hours; I am prepared to state it to you verbatim, from the beginning to the end, and with your permission, knowing you will feel no time can be too much that is occupied in such a detail, I will proceed to read it to you; it will occupy much of your time, but you have given me a pledge that you will not regard the time, for your attention has been unremitting from the time you entered that box.

In order to make out the facts of high treason, the first witness called before you is a witness of the name of Robert Adams. It may not be necessary, by way of information, for you have heard it from various quarters, but it may be proper to state, that he stands in the situation of an accomplice. Severe animadversions have been made upon him. It has been said, that he is not only a traitor to his king, unfaithful to his friend, faithless to those who have reposed in him their guilty secrets, but an apostate from his God, losing sight of every interest which can be attained here or hereafter. For the purposes of the present inquiry, it would be enough to state

(not that I censure those observations, those who made them did well to impress your mind with his want of credit, but it is not necessary to go higher to the unsupported testimony of any man, than to state) that he admits himself to be a party to the treason which he imputes to others; so it is in the case of murder, and yet the accomplice of the murderer is heard every day, and verdicts are pronounced upon the testimony of the accomplice of the murderer, on his sole confession, if the testimony of an accomplice so deep in the guilt himself, receives such confirmation as to induce the jury to believe that his story is not the invention of fiction, but the narration of truth; and this is to be collected by the fact of his being confirmed or not confirmed in his narration; it may not be unfit to observe to you here, that the confirmation to be derived to an accomplice, is not a repetition by others of the whole story of the accomplice, and a confirmation of every part of it, that would be either impossible or unnecessary and absurd; impossible, as in the case of a murder committed, where probably there are no persons present but the deceased, the murderer, and his associate in guilt; and therefore you are to look to the circumstances, to see whether there are such a number of important facts confirmed as to give you reason to be persuaded that the main body of the story is correct; I state this not on any authority of mine, but on the authority of two of the most humane and learned and excellent judges, that have adorned our bench, within the memory of man now living; I allude to the prosecutions at York, of Swallow and others, where the late lord chief baron Thomson and that most humane and excellent man Mr. Justice Le Blanc presided, the first of whom was called upon to state the law, which he laid down most correctly.—* I do not mean then for the first time, it was always the unquestioned law, and has been acted upon in innumerable instances. Upon the occasion to which I allude it was explained to the satisfaction of every one; you are, each of you, to ask yourselves this question—now that I have heard the accomplice, and have heard other circumstances which are said to confirm the story he has told, does he appear to me to be so confirmed by unimpeachable evidence as to some of the persons affected by his testimony, or with respect to some of the facts stated by him, as to afford me good ground to believe that he also speaks truly with regard to other prisoners or other facts, with regard to which there may be no confirmation? Do I, upon the whole, feel convinced in my conscience, that his evidence is true, and such as I may safely act upon? With this key and with that view, you will attend to the testimony of Adams, with which I will proceed.

He states, that he comes here in custody;

* See the case of Swallow and others, 10 How. Mod. St. Tr. 980.

that before he was in that custody, he lived at No. 4, Hole-in-the-wall-passage, Brook's-market; that he was formerly in the royal regiment of horse-guards, and left the army about eighteen years ago; he says, "I first knew a person of the name of Brunt," who is one of the prisoners included in this indictment, "in the year 1816, at Cambray, in France; I then knew him by the name of Thomas Morton; the head-quarters of the army were at that time at Cambray, and I was with the army carrying on my trade of a shoemaker;" this occasions the acquaintance and intimacy which led, as he states to you, to the communication I am now about to state; he says, "early in the present year, I called at Brunt's lodgings in Fox-court, Gray's-inn-lane, he was at that time carrying on his business of a boot-closer; on the 12th of January he introduced me to Mr. Thistlewood, in Stanhope-street; those were the lodgings of Thistlewood; Ings was with us; on our entering, Brunt said to Thistlewood, this is the man I was speaking to you about;" referring to some former conversation Brunt had had with him, about some man he was to bring; "Thistlewood said, 'you belonged, did you not, to the life-guards?' I told him no, I belonged formerly to the Oxford Blues; he said, 'I presume you are a good soldier and can handle your sword well?' I told him I once was a good soldier, but I had not had occasion to use the sword or any weapon for a considerable number of years past, I could use a sword once, and should be able to use my sword again in my own defence. Thistlewood then turned the discourse, and began to speak on the subject of the shop-keepers of London, particularly saying they were a set of aristocrats all together, and that they were all working under one system of government, and he should glory to see the day when all their shops should be shut up and well plundered;" then he says, "Thistlewood turned his discourse upon Mr. Hunt, saying, Mr. Hunt was a coward, that he was no friend to the people, that he had no doubt, could he get into Whitehall and overlook the government books, he should there find the name of Mr. Hunt, as a spy to government;" he next turned his discourse upon Mr. Cobbett, and said, "that he did not consider Mr. Cobbett, with all his writings, as any friend to the people, and that he had no doubt, if he could get a sight of those books, he should find Mr. Cobbett's name inscribed with Mr. Hunt's, as one of the spies to government; then Brunt alluded to two men that he had to call upon in Carnaby-market, and asked Thistlewood if he would take a walk to see the men; he refused to go, saying, he had somewhere to call; before we left the room, Brunt told Thistlewood of a raffle for a blunderbuss with a brass barrel," we have since heard some conversation about an intention to raffle for a brass-barrelled blunderbuss; "Brunt asked Thistlewood if he would be there; to the best of my recollection, he said he would, I am not quite certain whether

Mr. Thistlewood said he would or would not go, but we all left the room together; Brunt told me that there was a plan drawn up, and he had no doubt, if I would consent to join in it, it would meet with my approbation; he said the plan was, to assassinate the ministers, the first time they met together to dine; he said, we have information where they keep their money; the thieves have three million in hard money; after we have done this, we intend to go to that place and plunder it;" he says, this was before they arrived at Thistlewood's lodgings.

Then he says, "sometime after this I was confined for debt in the Whitecross-street prison, and remained there until Sunday the 30th day of January, that was the day after his majesty's death. On the next day, Monday, I saw the prisoner, Brunt, at his lodgings in Fox-court; Brunt lived in the two-pair of stairs front room, and there was a meeting in a back room on the same floor. Brunt told me he had hired that room of the landlady for Ings;" that was the room taken by the recommendation of Brunt for Ings, and where the people we have heard so much about used to meet; he says, "meetings were held there twice a-day from that time up to the 23rd day of February," which you all know was that important date on which this conspiracy, such as it was, was detected in Cato-street, "except that there were none on Sunday evenings;" the Sunday evenings appear to have been occupied in other ways, in readings in public houses, and conversations not of the most useful tendency to keep men out of scrapes of this sort, but for some reason the meetings were not held at this room on the Sunday evenings. He describes the room as several other persons have done, as having no furniture in it but a fixed stove; then he says, "the persons who usually attended those meetings were Thistlewood, Brunt, Ings, Hall, Davidson (the prisoner now at the bar), Harrison, Wilson, Bradburn, Tidd occasionally, but not so constantly as the others, and Edwards. I do not recollect the names of any more at this moment; I was at the meeting on Monday the 31st of January, but nothing particular passed then. I was there on the following Wednesday; when I went to the room I found Thistlewood and Harrison there, and in the course of the evening, Ings, Wilson, and Edwards came; when I went in Thistlewood and Harrison had been in deep discourse respecting some information they had gained, that the life-guards and foot-guards were to leave London for the purpose of attending the funeral of his late majesty. Harrison said, that a life-guardsman had told him, that every man in the life-guards that could be mounted was to attend the funeral, as well as the foot-guards that could be spared, and likewise the police officers. Harrison said, he thought it would be an excellent opportunity to kick up a row in London that night; Thistlewood agreed to the plan, and proposed, that it should be done

by collecting together what men they could among themselves, and taking the cannon in Gray's-inn-lane, as well as the cannon in the Artillery-ground, and likewise to make use of the fire-balls in setting fire to different buildings." He said, he thought it would be a favourable opportunity, as the life-guards and foot-guards, and the police, and a great many other persons who attended the funeral of his late majesty would be out of town. The noble lords, constituting his majesty's cabinet, could not fail in the solemn duty of being present upon that melancholy occasion. It has been said, in the course of one of the eloquent addresses made to you, that all that was intended here was, "*the kicking up a row in London*;" one is disposed to ask, what sort of row could be intended to be kicked up in London; they choose the opportunity when all the horse-guards, and all the foot-guards, and all the police were out of London, and when, as they express it, there is nobody in London to protect it; oddly enough, during about a fourth part of the trial in which we have been engaged, it has been admitted, that to be sure there was a conspiracy to assassinate all his majesty's ministers, but it is said that that was all; these persons were all very poor, and wished to kick up a row; but it appears it was to be a row of such a size, that it was thought desirable they should avail themselves of the absence of all troops, and all police officers from London. That is the effect of the testimony of this witness; he communicated this to Mr. Thistlewood, and Mr. Thistlewood approved of it; but Mr. Thistlewood immediately improved upon it, and proposed, that the two pieces of cannon in Gray's-inn-lane, and the six pieces of cannon in the Artillery-ground should be taken all on the same night (this is the row that was to be kicked up on the night of the king's funeral) and that they should use fire-balls to set fire to the different buildings. Thistlewood then said "it would be necessary to send a party to Hyde-park corner to prevent any orderly man leaving London for Windsor, to communicate at Windsor" What? why, that there had been a row in London; that it was necessary to take care that no persons should come back to prevent the effects of this idle row; he likewise proposed, "that the telegraph over the water should be taken to prevent any intelligence being communicated to Woolwich," which, we all know, is the deposit of a considerable proportion of the artillery; "this plan met with the assent of those persons in the room; after this Brunt and Ings came in, and the plan which had been in agitation was communicated to them by Thistlewood; Brunt and Ings both declared, that there was nothing short of the assassination of ministers would satisfy them; in consequence of this, the project which had been mentioned was given up." Now, gentlemen, every thing I am stating to you, will be subject to your believing or not believing this narrative; but as we pass along,

I cannot help observing on the character of this proof as it is developed. It will be for you, when you have heard this evidence to its end, to ask yourselves, was this a plan which had nothing for its object but the destruction of fifteen men, however elevated by rank or station, or by their virtues? was the thing in project, that which no one has the hardihood to deny, the destruction of some of his majesty's cabinet ministers, and the destruction of some houses, and to end there, or a more melancholy object, to effect a revolution in the country? Not to subdue, as it is said, the millions resident in this metropolis, but to endeavour to effect all those objects which are stated upon this indictment, however wild and impracticable such projects might prove.

Then the witness says, "I recollect a meeting which took place on Saturday the 19th of February; there were present Thistlewood, Harrison, Brunt, Ings, and Hall; on my going in they seemed to be in a study between themselves; they got up and Thistlewood said, well, it is agreed on, that if nothing happens between this and next Wednesday night, we then go to work; he said that they were all so poor, they could not wait any longer; and he gave instructions that there should be a meeting the next morning, to draw up a plan to see how they should act."

Then he says, "a meeting took place the next morning; it was a larger one than usual: the prisoners at the bar were of the party; we met about eleven o'clock. Thistlewood on looking round said, there are twelve of us, it is time to proceed to business. Tidd took the chair with a pike in his hand, and Thistlewood said he had come to a determination, if nothing transpired between that time and Wednesday night to go to work; he said, we have been waiting so long expecting the ministers to dine together, finding they do not, we intend, if they do not dine together between this and then, to take them separately; he then began to propose his plan about taking the cannon in Gray's-inn-lane, and the Artillery-ground, and that Palin was to take upon himself to set fire to different buildings, and he was to have assistance from the men that he had collected himself. Mr. Thistlewood said this was the outline of the plan at present, and as Mr. Brunt had a plan to propose with respect to the assassination of ministers, he should drop it for the present. Brunt then came forward to explain his plan, and Thistlewood said, let my plan first be put from the chair, and if any one has any thing to say upon it, let him speak; it was put from the chair, and agreed to by all present; Tidd being in the chair. Brunt then came forward and said, as we cannot get the ministers together as it was proposed, I propose to take them separately, and that the men employed for that purpose shall be separated into so many parts, and from each allotment a man shall be drawn to do the deed, a man for the purpose of committing each murder, and if he attempted it and did not suc-

ceed, and there was any sign of cowardice, he should be run through upon the spot directly." Then the witness says, "upon this I got up and asked him if a man attempted it and failed, was he to be run through upon the spot? Brunt said no, if there were no signs of cowardice; this motion was put from the chair as before, and agreed to. After this, Palin, Potter, and Strange, came in; the circumstances that had passed were communicated to them, and they agreed to them. After Thistlewood had communicated the same to them as they had to all the others in the room, Palin got up and said, that he had paid due attention, and that he among the rest had agreed to what had been proposed, but he wished to know how the plans were to be executed, as they had so many objects to be carried at the same time." The plan of assassination was called the west-end job; he said, "you talk of the west-end job taking forty or fifty men?" which number had been mentioned before by Thistlewood; "you talk of taking the pieces of cannon from Gray's-inn-lane, and six pieces of cannon from the Artillery-ground; and my setting fire to the buildings, I wish to know how this is to be done; you ought to know whether you have men to depend upon sufficient; I cannot give you any satisfaction on that point till I see what men I can speak to; and I wish for instructions whether I may communicate to them what has passed here this morning." Thistlewood and Brunt said, that there was no doubt that Palin might communicate it, if he was satisfied within himself that he had got such men as he could depend upon; upon that he sat down satisfied. Thistlewood then turned round to Brunt and said, "Oh, Brunt, as Palin is here, you may as well take him to this spot close by, and he will be able to judge for himself whether the thing is practicable or not;" that place was Furnival's-inn-buildings, which were at that time in a progress for being completed for chambers; I believe not yet quite completed; in a commanding situation in the metropolis, and they would make a very great fire, and attract much attention; he then says, "that was near the back of Fox-court; Brunt and Palin went out and returned again, and Mr. Palin said it was a very good job, and a very easy one, and would make a very good fire. Thistlewood said it would be highly necessary, if it was possible to get the men together, to communicate their intentions and give them a treat, but he did not know how it was to be done, they were all so poor. Brunt then said he had a one pound note, he had reserved for the purpose, though he had done little or no work lately, but he would be damned if he would not spend it upon his men. Thistlewood said, he did not know where they could take them to, to give them a treat; I suppose, he said, we can have the back-room at the White Hart, at Hobbs's, where the meetings on former occasions had been held. Brunt said he did not much like it." You know

what that arose from; that Adams had stated that Hobbs had thrown out some circumstances of the officers having called there, as if they had information that there was some radical meeting there; and Adams had got into some disrepute with the party, for throwing cold water upon their designs. Brunt said "he did not much like it, after what had slipped from my mouth; but never mind we can go there armed, and if any of the traps should come into the room, I do not see what occasion we have to fear them; he said he would call on Hobbs and hear what he had to say; on second recollection, he said he would give his boy a holiday, send his wife out, and have what men he could collect together in his own room; after this we separated." Then he says, "I have seen arms in that back-room at different periods, and among other things, pike-staves in the rough just as they were cut from the tree they grew on; Bradburn sawed the ends of them off, and ferruled them in that back-room; there were holes made in them, it was then considered that they were too weak, that they would not support the pike; in consequence of that the ferrules were cut off again, and bigger ones got and put on; this was done in the same room; there were some hand-grenades brought in there ready made, and some that were made there; I saw Davidson and Harrison there, making a kind of thing that was wound round a tin case first, and some pitch that was melted in an iron pot, and after this was put in there were some nails bound round; they were both engaged in making a number of them; they were afterwards carried to Tidd's lodgings in Hole-in-the-wall-passage, which was called the dépôt. Thistlewood assigned as a reason for removing them, that there should be nothing found in that room in case any person came there who might give information."

"I remember the meeting that was held on Tuesday the 22nd of February, in the same room at Brunt's, about ten o'clock; there were present Thistlewood, Brunt, Hall, and Ings, and soon after Edwards came in, and said he had been looking into the newspaper, and there was a notice that the ministers were to be at a cabinet dinner on the following Wednesday at lord Harrowby's in Grosvenor-square; in consequence of this, Hall fetched a newspaper, and it appeared by that, that the information was true; upon this being communicated, Brunt said, Now, damn my eyes," it is a most horrid expression, I am obliged to read it to you—being the manner in which this person treated a superintending Providence, as a superintending power only for the purposes of mischief and destruction, and not as we have this day reason to believe, a Providence for the protection of worthy men against the plots of the wicked—the horror of the statement almost disqualifies one from stating it; he said, "Now, damn my eyes, I believe there is a God, I have often prayed that these thieves may be called together, that we

may have an opportunity of destroying them, and now God has heard my prayer." Rejoicing in the opportunity which had occurred, of offering the throats of these illustrious persons to the daggers of the assassins, or their persons to the effect of these hand-grenades, at the moment of relaxation from the more active cares of public life. Ings was equally alive to it. "Thistlewood then proposed that a committee should sit directly, to alter the plan of assassination, which had been agreed to on the Sunday morning;" the plan on Sunday morning, you remember, had been the dividing the men into so many parties as they knew they could take off ministers by individual assassination, but now the golden opportunity having presented itself of ministers assembling at a cabinet dinner, a further mode was to be had resort to; for which purpose he proposed a meeting should be held, and a meeting was held accordingly; the witness says, "I took the chair, and called to order; Thistlewood was going to speak, but I interrupted him saying, gentlemen, I hope from what I said yesterday morning, you have given it a due consideration; that was what had been said to me by Hobbs, the landlord of the White Hart, respecting the police officer having inquired at his house. Upon this, Brunt put himself into a passion, and so did all of them, particularly Harrison, who walked about the room and threatened the first man that attempted to fling cold water upon the concern, he would run him through directly with a sword; upon this I opened my breast and said, Harrison if you think that I am not a friend, do it now. Palin and Potter and Bradburn were in the room, Palin got up, walked across the room, and insisted on my being heard; Hall was also in the room at that time. Brunt then, in order to obviate any difficulties that might arise, supposing Hobbs's information to be correct, proposed that lord Harrowby's house should be watched, to commence at six o'clock that evening;" thus they proposed to ascertain whether there was any truth in the idea of a suspicion being entertained by government; "Davidson, and another man, whose name I do not recollect, were to be the first, and Brunt and Tidd were to relieve them at nine o'clock; Davidson and Tidd were both present at the time; the reason why they were to watch, was to see whether any police officers or soldiers entered the house, and if so, it was to be communicated to the committee, and if nothing of that kind occurred, Brunt insisted upon it that the business should be done the following night. If they saw any police officers or soldiers enter, it would be natural to suppose that the suspicions of government were raised, and they were to give information to the committee. After this proposition of Brunt's was settled, Thistlewood directly proposed that Tidd should take the chair, in consequence of my interrupting the business; and Tidd took the chair accordingly. Thistlewood then came forwards, and proposed a fresh plan

for the assassination of ministers; he proposed that he himself should go to lord Harrowby's house with a note in his hand, and tell the servant to deliver it to his lordship, and to state that he must have an answer; at the time he got in, the others were to rush in directly after him, and to secure the servants, presenting a pistol to their breast and threatening them with instant death if they made any resistance; others were to take the command of the stair-cases, one party to take the command of the stairs leading to the bottom part of the house, and another party to take the command of the stairs leading to the upper part of the house; and two men in the area. In order to prevent any relief being afforded to his majesty's ministers in the dining-room, they were each to be provided with a hand-grenade, as well as pistols and blunderbusses, and if any servant attempted to retreat from the upper or the lower part of the house, or the area, a hand-grenade was to be thrown among them, with a view to their destruction; then the others were to rush into the room at the same time; Ings proposed himself to take the command to lead them into the room in this kind of way; as soon as he entered the room, he was to address their lordships by saying, Now my lords, I have as good men here as the Manchester yeomanry; enter citizens and do your duty. The two swordsmen were to follow in after him;" they were to be the witness Adams, who had formerly been a soldier, and Harrison, who had been in the life-guards; "on the swordsmen entering the room, they were to be followed by the pike-men. Ings, who was a butcher by business, declared he would follow, and cut every head off as he came to them. Ings had two bags with him, and he proposed to bring away the heads of lord Castlereagh and lord Sidmouth in the bags; he said he would have one of lord Castlereagh's hands, and he would cure that;" which I understood from the witness, to be preparing it in some sort of pickle; "as it would be thought much of at some future time. At a former meeting, Ings had said that he would exhibit those heads on poles, and carry them through the streets; after this should be done, Harrison undertook to go to the King-street barracks, and set fire to the shed where the straw and hay were deposited, and to destroy the whole building." Then he is asked whether any further use is to be made of the heads when they were brought away, and he said yes; that it had often been talked of, and that this discourse finished on the Wednesday afternoon. "After Ings had proposed to exhibit them on a pole, Thistlewood said, no, the best way of carrying them would be to put them each on a pike, and carry them behind the cannon to terrify the people, and to make them believe that there was somebody of more consequence than was then visible, at the head of the conspiracy. It was proposed after this by Bradburn, that after they had been exhibited about the streets of the metropolis for

two or three days, he would make a box, and enclose them in it, and send it to Ireland, or take it over himself, to be exhibited there;" he said, "then it was proposed that after they had done at lord Harrowby's, Harrison was to go to the horse barracks, supported by Wilson, to set them on fire by a ball prepared for that purpose; others were to proceed to Gray's-inn-lane, to the City-light-horse barracks" in truth the barracks of the light-horse volunteers; "and if they met with any interruption from the people, it was proposed to run the pikes through them, and to fire upon them occasionally; and after they met the party in Gray's-inn-lane, to assist them in taking the two pieces of cannon at the light-horse stables, and to proceed from thence to the Artillery-ground, to take the six pieces of cannon there; this party was to be headed by Cook, and after Cook had got the six pieces of cannon, he was to load them, and bring them into the street."

Now, when you are by-and-by taking into your consideration whether the conspiracy had for its object only the taking off the ministers, and to end there, or to endeavour to produce a revolution in the country, by first beginning it in this town; you will recollect, that there were found among the articles these conspirators had provided for the occasion, cartridges made up in bags of flannel, applicable to six-pound cannon, and in fact used for no other purpose; not in the state in which they were likely to be in the possession of any dealer, or other private individual who keeps gunpowder, "the cannon were to be loaded, and brought into the street, and if there was any interruption, Cook was to fire; if he found the people come over to him to enable him to advance, he was to take them to the Mansion-house, and when they got to the Mansion-house they were to divide the cannon into two parts, place three on each side of the Mansion-house, and demand an entrance;" they were to summon the inhabitants of the building to surrender, "and if it was refused, if they did not surrender, they were to fire upon it on both sides, and when taken, it was proposed by Thistlewood for the seat of the provisional government." If this is believed, gentlemen, what becomes of the doubt which has been suggested, as to the extent of the plot which was in contemplation? is this constructive treason? is this constructive levying of war against the king? If the testimony is not true, the prisoner is not guilty of the crime charged upon him. "Cook was not to be of the party at lord Harrowby's, he was to command the party that was to go into the city; and then it was proposed that they should take the Bank of England, and plunder it, but the books were not to be meddled with, as Thistlewood thought by preserving them they would communicate to them somewhat more than they were aware of. It was proposed, that the persons there should go round for the purpose of communicating what they had in view to their associates; Harrison proposed that the word *butter*

should be the countersign; a station was to be procured near Oxford-street, by Tyburn-turnpike; the man appointed to stand there was to pronounce the letters *b, u, l.* the other was to answer *t, o, n.* and on his doing that, he was to be considered as a man friendly to their object; after making this arrangement, we separated for the purposes of preparation; Davidson and another man went upon the watch at six o'clock; it was proposed, originally, that Tidd and Brunt should go upon the watch at nine o'clock to relieve them, and they started for that purpose but Brunt came back in about five minutes, saying that Tidd had called at a house, and found a man that he had appointed; that he was of too much consequence to be left, and that therefore he could not go upon the watch."

Now, that there was a watch at the house of lord Harrowby, is proved not only by the testimony of this witness, but by the two watchmen, who saw persons looking about, and by the gentleman's servant who played at dominos with Brunt, so that there has been no attempt made to shake that part of the testimony. Then he says, "in consequence of that it was proposed that I should go instead of Tidd, and accordingly I went with Brunt; we saw Davidson there, and relieved him; we did not continue in the square all the time, but in the course of our watch, we went into a public-house at the corner of the mews, at the back of the square; there Brunt played at dominos; I went into the square again at eleven o'clock, and stopped till the turn of twelve; I found all quiet, and I then went home; I recollect going into Fox-court on Tuesday afternoon or evening; on going up stairs, I smelt a strange smell, and on going in I found Edwards, Ings, and Hall there; Ings and Hall were employed in making illumination balls to set fire to the buildings with, and Edwards was employed in making touch-paper for the grenades; Hall was laying the paper on the floor to receive the balls, to prevent their sticking to the hand; I went away almost directly." He then proceeds to the transactions of the Wednesday; he says, "on Wednesday I went to Fox-court, about two o'clock; I found Brunt in his own room; soon after I went Strange came in, and two or three strangers afterwards; I saw some pistols lying on the floor in Brunt's private room; they began to try to put flints into them; on the last men coming in, Brunt proposed to go into the back room, which they did." Now, you will bear in your recollection what I stated as to the confirmation of the accomplice; have you any confirmation of this most important fact? Have you not Hale the apprentice of Brunt, who almost in words and syllables (though he has had no opportunity of hearing the testimony of Adams) speaks to persons being in Brunt's private room, to one of whom he gives the name of Strange, and states that the rest were strangers; that they were flinting the pistols; that they conceived they were not in a place of proper security, and

that they went, therefore, into that place which had been made more secure by putting up Mrs. Brunt's apron; in this he is confirmed by the circumstance that they removed to that room in consequence of being engaged in some transaction which was not to be known, and which it was wished should be concealed; there is not the slightest imputation attempted to be thrown upon that young man, the apprentice of Brunt, who gives this (probably you will think) most important confirmation of the testimony of Adams. Adams proceeds, "we went accordingly there with the pistols, there were no other persons in the room at that time, except those we brought from Mr. Brunt's room; Thistlewood came in soon afterwards; Ings came in in the course of the afternoon, and within a very little time after he came in he began to equip himself; before he came, the strangers were busy in fixing flints to their pistols, and slings to the cutlasses that were in the room; when Thistlewood came in, he looked round and said this looks something like as if you were going to work; he clapped his hand on my shoulder, and asked me how I did? I said I am rather unwell, and very low in spirits; in consequence of this, he proposed to Brunt to send for something to drink to put me in spirits, and directly after he proposed that there should be some paper fetched, as he wanted to draw up some bills; Thistlewood gave Brunt some money, and said he wanted such paper as the newspapers were printed on; I proposed to him to have some cartridge-paper, which was agreed to, and Brunt said that his apprentice or his boy should fetch it; he went out for that purpose, and the cartridge paper was brought; a table and chair were brought in from Brunt's room, and Thistlewood sat down and wrote three bills. The words written in large writing letters on those papers, were these, Your tyrants are destroyed; the friends of liberty are called upon to come forward; the provisional government is now sitting.—James Ings, secretary, February 23, 1820."

As I pass along, let us ask ourselves, I ought rather to say you will ask yourselves, can you receive any confirmation of this part of Adam's testimony, of the scene he describes as to persons assembling and making preparations, for which purpose they commence in Brunt's room; that is not considered secure from observation; they are advised to retire into another room, and they do so. Hale gives you the same account. Adams tells you, that it became necessary that something should be written, and Hale tells you that he was applied to for a piece of paper, and that he carried that into the room, and that then he was desired to fetch some cartridge paper, and that that was carried into the room; that something was wanted—a table and chair—they were carried in; he cannot give you any further account of what was done with the paper in this room. The learned counsel for the prisoners says, I wish we could have seen this procla-

mation, I could then have told you it was only a riot to set a few houses on fire, or destroy the ministers. The language of this, if it is correctly given, is unequivocal; it is, "Your tyrants are destroyed?" Whose tyrants? The tyrants of the country. "The friends of liberty are called on," all who can read the English language, "to come forward;" for what? you will answer that question for yourselves; but if you want any thing further that is answered, "The provisional government is sitting." You do not want Hale or any body else to come and satisfy the requisition of the learned counsel that he saw this proclamation, which I should apprehend would be submitted only to the confidential and supposed safe eye of a co-conspirator. Would they unfurl these till the fires were lighted, and persons began to inquire what was meant by fires being lighted in different parts of the metropolis? Is there any requisition for the means of preparing something of that kind? the testimony of Hale is that to which you must look for the purpose of answering, whether you have received upon that important point confirmation of the testimony of Adams.

Then he says, "Thistlewood was writing the third bill; and on my looking at him, I perceived him to be very much agitated, and he could not write any more; he wished somebody else to take the pen, and proposed that Hall should do it, which he refused. There was a strange man in the room, who refused at first to take the pen, but afterwards took it, and proceeded to write other bills; these bills were to be stuck up at the side of different buildings that were to be set fire to, in order to inform the public of what had been done." What necessity was there to take means to inform the public with what had been done, if the object was only to cut off fifteen ministers, without any ulterior purpose? the public would know that much too soon, by finding some of the first families in this country in mourning, in consequence of the dreadful explosion which was intended to have been made. For what was it to be communicated to the public (except for the ulterior object) that the friends of liberty were desired to come forward now, that the provisional government was sitting? Then Thistlewood described himself incapable, from agitation or indisposition, to go on, but still there was something more to be done, and Hall having refused, another person took it and wrote something by the dictation of Thistlewood, which I understand, on one of the earlier trials, it was ruled, could not be received in evidence, and therefore is not offered upon this; that is therefore entirely a blank. Then he says, "Ings accoutred himself by putting his belt around his loins, another hanging upon his shoulder to support a cutlass with, and a couple of bags, like soldiers haversacks, one over each shoulder; he put on his great coat afterwards; the belt round his loins, which was to contain a brace of pistols; on viewing himself, he perceived that he had forgot to

bring his steel with him; he produced upon that occasion a large butcher's knife, round the handle of which he had wound wax-end, which he stated was for the purpose of preventing the handle of it slipping when he was doing the job; he said he had prepared it for that purpose;" that is, the purpose of cutting off the heads of lord Castlereagh and lord Sidmouth. "Bradburn came up, saying, he wished Thistlewood to send some person to the men he had collected together at a spot where they might be more handy. Tidd was appointed for that purpose; he was not very willing to go; he said, as they were Irishmen, he thought it would be better for one of their own country to go, as he would do better with them; but it not being convenient to send one of their own countrymen, he went. Palin came in, and as Thistlewood and Brunt were not in the room he began to address himself to the people in the room, saying, gentlemen, I hope all present know what they are met here for; I hope you all know what it is, and that you will give it due consideration; in the first place inform yourselves whether the assassination of ministers is likely to be of consequence to your country; if you think it will, then in the next place you ought to come to a determination to stick true to each other, for unless you do so you can do no good; and if any man is seen after the work is begun to show the least signs of cowardice, that man ought to be run through upon the spot." Here, he says, he was interrupted by a tall man in the room, whose name he does not know, saying, "he could pretty well see the meaning of his speech; but, says he, you speak as if all that are in the room knew what we are met here for; that is not the case; that is what I and some of us want to know; I am not afraid of my own life, nor should any man that turns out on such a thing as this be afraid of his life; I will be the first, if I see any man a coward, to run him through. Palin was going to speak again, but at this moment Brunt came in, and observing, as I suppose, an alteration in the countenances of the men in the room, wished to know the cause; the tall man replied, that there were some in the room who did not know what they were met there upon, and they wished to know what they were going to do. Brunt directly said, this is not the room to know that in; go along with me to a room in the Edgeware-road, there I will tell you; and any man that goes along with me I will treat him with something that is good to drink, in order to put him into spirits for what we are going about. The tall man replied, I hope whoever is going on this business will not get drunk, for a drunken man in such a business is not fit to be trusted; he will run himself into the hands of his enemies. Brunt then began to put his men into movement to go to the Edgeware-road, saying, that Palin would want that room to bring his men to. I did not see Davidson at Fox-court at the time I am speaking of, but he was frequently at the meetings there; he was at the

meeting on the Sunday when this meeting was arranged. The first of my knowing him was on the 10th of January, before I went to prison. After Brunt had put his men on the move, I went up Oxford-street, and met Thistlewood in the Edgeware-road; Brunt and another man were with me at that time, and we all went together to the stable in Cato-street. When we went into the stable, on the ground-floor, I saw Davidson and Wilson, apparently doing something to the pikes." Then he says, "I went up into the loft: the number I found assembled, including those that were below, were about six or seven, or there might be more. There was a bench, like a carpenter's bench, in the loft, and on it there were pistols and cutlasses; there were more men came in the course of the evening, and Thistlewood counted them; there were eighteen up stairs and two below. I had a blunderbuss, which I took off and laid upon the bench, and a broomstick that had been prepared for the reception of a bayonet for Brunt; I delivered them both. Tidd was not there at that time; Brunt was up in the loft when I went up, and Thistlewood went up before me. When I went up, Thistlewood and Brunt were in discourse together; Thistlewood seemed rather agitated for fear (as it appeared to me afterwards), that Tidd would not come;" you will recollect that Tidd had, according to the testimony of the other witnesses, undertaken to conduct some other persons who were not arrived; that according to the testimony of Hale, other persons were expected to call, and did call, some of whom were conducted by Hale to the White Hart, and others who knew the White Hart had been sent there; and it appears on the evidence of Monument, and according to the evidence of his brother, which is unimpeached, that he was to meet him, and did meet him; and that when he arrived, he told him he had other men to wait for, but would not wait longer than seven o'clock; but the pledge that he would come there, you find redeemed by his appearance soon afterwards, attended by the witness Monument; then he says, "Ings began to stamp and swear, saying he hoped they would not stop now for if they did, he should either hang himself or cut his throat; and just after this, Tidd came; before Tidd came, Brunt turned himself round to the bench, and said he would venture his life that Tidd would come; that he was confident of it; and shortly after Tidd came into the room. I afterwards saw Tidd talking to Thistlewood; they both seemed a little agitated; Thistlewood seeing me look at him turned away; and Tidd came towards me, and I said to him, Tidd, do not you think this is a pretty set out; do you think it is possible for the men here to do that which is talked of; Tidd said, no, it never can be done; Thistlewood said, I hope, for God's sake, you will not think of dropping the concern now; if you do, it will turn out a second Despard's job." Gentlemen, upon the subject of what the ultimate object of the conspiracy,

was, take this declaration, if they dropped the concern, then it would be another Despard's job; if you believe it was made it is of great importance at this period; if all the police officers in London, supported not only by that gallant officer lieutenant Fitzclarence and his piquet, but by a regiment of hussars had come, they might have said, why, what do you want with us? but take us into custody if you please; but Thistlewood said, if you retire now, it will be another Despard's job. If the sole object of that conspiracy was to kill the ministers, and to plunder houses, that would not be high treason. What was Despard's job? that was a project and intention to summon London from St. James's to Tower-hill, constituting the crime of high treason; this is, if you believe the testimony, for I have said to you more than once if you do not believe the testimony it all vanishes; but I desire you to ask yourselves, what the character of the conspiracy is; is it a conspiracy only with the intention that they talk of? Is it to destroy the ministers only, (not that that is a light offence) or was it from an idea that the people, as they represented, were desirous of a change, and that if they could strike that blow they should succeed in their ultimate objects? If they could carry the heads of the ministers through the streets at the tail of their cannon, did they propose to themselves any thing short of that the accomplishment of which I know they had no rational ground for expecting? For I hope to God, the constitution established in this happy land stands too much in the conviction of blessings enjoyed, for such men to succeed in the extinguishment of the government, and the bringing about a revolution; but you will have to ask yourselves, whether this was not a desperate attempt to effect that most desperate plan. "Then Thistlewood said, there are quite men enough in the room, but you seem to be frightened for fear of not having strength enough; he said supposing lord Harrowby has sixteen servants in his house, they will not be prepared as you are; but not only that, but they will be terrified, and from going into the house to coming out of it again, will not exceed ten minutes; he said then, that he thought fourteen men would be enough to go into the room; it was put to all in the room whether they were willing to go, and on their consenting, there were fourteen men picked out for the sole purpose of going into the room to do the murder, the other six were to secure the servants, to guard the stairs and the area;" then he is asked, whether any thing was done in the way of separating the fourteen from the rest; and he says, "the men stood where they were, and Brunt produced a bottle; the fourteen agreed to go into the room;" he then mentions several of them, but I am not sure that he mentions them all. "Thistlewood was one, Ings was another, Brunt was another, Harrison, Wilson and Davidson also were pro-

posed; Davidson was not at that time in the room, he was down below; Bradburn also was one, and others whose names I cannot now recollect; those were then separated to a different part of the room from the rest, and while the separation was going on an alarm was given below; before this time, Brunt had addressed those who did not exactly know what their preparations were; he says, Mr. Brunt made an address to the people; he turned round to the bench again, and said, "you seem to think there is not sufficient strength to go there; he declared that if there were not more than eight or nine, he himself was determined to go; he directly said, if there were not more than five or six men, he would go; and if he found himself in danger, he would blow the house down over their heads; then" he says, "I heard a sort of bustle below stairs; directly after this, at the bottom of the ladder, the word was given, halloo! shew a light; and on this Thistlewood turned to the bench, took a candle and held it at the head of the ladder in the room; he looked down, and saw persons coming, and then turned round and set the candle upon the bench again; on this, they began to sidle off into the little room; he says this was the first time I saw the little room; officers came up the ladder, and took the command of the room with their pistols presented; Smithers was killed, and the lights were put out, a pistol went off, and I made my escape; when Thistlewood said that fourteen men would be sufficient, Tidd was present, but I am pretty sure that he was not one that was to go into the room; he was present also when the assent was given to Thistlewood's proposal, that they should go on with the measure, and likewise when Brunt made his speech; that was after I had made the remark, that I did not think we could accomplish the work. I was first apprehended on Friday the 25th; when I made my escape, I went back to my own place, and remained there till I was apprehended. I was afterwards examined at Whitehall."

Then on his cross-examination, he says, "I abandoned my religion and became a disbeliever in Christianity;" he had been educated and passed his life up to the age of forty-five, as a Christian; he says, "I am now a Christian, I came back to the belief of Christianity about the 24th, but I was convinced before;" the 24th was the day after he found himself at home, after this meeting in Cato-street; he says, "though I had been convinced before, I did not come back exactly till the 24th;" then he is asked, and I do not mean to deny that the form in which the question was put was proper, whether the fear of the halter had not some effect upon him; he says, "I do not mean to deny that;" then the counsel asked him, whether since his last examination, he had not had some advice given to him as to the altering his manner; he said no, he was out of health, he had been frequently examined, that he had no pur-

pose of altering his manner, and no such advice had been given to him; then he says, "I never mixed in political society in my life before I saw Thistlewood; I have had my political opinions, but never joined a party; I never thought it lawful to sweep off fifteen men in cold blood; I thought it was a very cruel act at the first proposal; it was first proposed to me on the 2nd of January, and notwithstanding that I consented to be introduced to Mr. Thistlewood, ten days afterwards, and from that time to the 23rd of February, I still continued to attend meetings where that matter was debated settled and determined on, and even was chairman once at one of the committees; the committee had no name; the body that was together in the room at Cato-street was the largest number I ever saw collected together to my knowledge;" he says "there was a talk of a vast many more assembling; I could not have brought any men into the field; all I agreed to do was, to contribute myself; those in the committee knew what was going to be done, but there were some that attended the meetings, who did not know; I knew what was intended to be done; the same party that were to do the west-end job, were to go to Gray's-inn lane; when the west-end job was done, which was not to take up above ten minutes, the same party were to go to Gray's-inn-lane; Cook was to head the party to take the cannon at the Artillery-ground, that was not the west-end-job party, I did not know where Mr. Cook's party was to come from; I have seen Mr. Cook himself; Mr. Palin and others were to fire the town, but I do not know who they were, nor what they consisted of; nobody objected to the proclamations; it was proposed by Thistlewood, but not put from the chair, that the hand-bills should be stuck up against the houses; I do not know what became of them, nor who were to stick them up; I do not know Thomas Chambers, I never called on him;" this was with a view to the contradiction by Chambers, who was afterwards examined. "I do not know that ever I was acquainted with such a man." In answer to a question, whether on the night of the 23rd, he and Edwards called on Chambers, and desired to leave some arms with him; he says, "I never saw Edwards after the Wednesday morning, and I will swear I did not call on Chambers; I do not know that I ever was in his house; we did not solicit him to be permitted to leave arms there; I do not even know Heathcock-court," which was where Chambers lived; "I have omitted a great many things in my evidence to-day; I stated before, that messengers were to be sent to the out-ports, to prevent any gentleman leaving the kingdom without an order from the provisional government, and Brighton was to be taken by force; all the seaports were to be plundered, if they permitted any person to go out of the kingdom; I cannot say where the force was to come from to do this, but they expected the people

to join them; I was not a leader, I had not that ambition about me; I did not expect that they would bring things to such a pass;" then he is asked, what were his motives; and he says, "I had a reason for it, my object was, to search farther into the principles of Brunt;" that was a blameable curiosity; he says, "I had a foolish and curious idea, and every man may run himself into danger by that; that was my motive; I had not been long acquainted with Brunt, before I thought there was something wrong in him; that was my reason for joining in this plot; I do not know a person of the name of Whatman;" that turns out to be correct, at least no such person is called. Then he is asked, whether the prisoner Tidd, when some one said to him here is a pretty business, do you think there are enough here to do such a job, did not reply that he had been deceived in the business, and that he would have nothing to do with it; and he says, "Tidd made no such observation, but his answer was, no, it never can be done, and that was all that he said;" he says, "Davidson was not at the meeting on the 23rd; I do not recollect seeing him armed when he was in Cato-street, I saw him there both in the stable and up in the loft; I did not observe that he had any arms; I saw that he was very busy amongst those who were preparing themselves with arms."

On his re-examination, he says, "I remember a person bringing 500 bullets to the room in Fox-court; I became an infidel from reading Paine's Age of Reason, which I received from the prisoner Tidd; Potter and Palin were not in Cato-street; there were men there whom I knew nothing about; I did not know Cook's party; Hall was in the room at the time the proclamations were written." Hall is not a prisoner now under indictment, and the observation meant to be conveyed to you on the part of the Crown is this, that if the account given by the witness Adams is incorrect, and that there was nothing written on this cartridge paper in the form of proclamations, Hall might have been called to prove these facts; and as it has been urged to you by the attorney-general in his reply, it is undoubtedly so; he could have been called to prove that he was not one of the party so assembled, or admitting that he was one of the party so assembled, that no such proclamation was written, and he would, as the Attorney-general has said, have subjected himself to no consequences such as were supposed; he might have objected to any such question as would have a tendency to criminate himself, if proposed, and it would have been the duty of the Court to have cautioned him.

This being the evidence of the accomplice, to be received as you have been told on all former occasions, with all manner of jealousy, with considerable doubt, to be acted upon with care, they now proceed to call witnesses, from whom they submit, that it derives most abundant confirmation.

The next witness is Eleanor Walker, the servant and niece of Mrs. Rogers, of No. 4, Fox-court, Gray's-inn-lane. She says, "Brunt lodged there, and occupied the two front rooms on the second floor; there was a back room on the same floor. In the month of January last, Brunt introduced Ings to take that room, and it was afterwards taken unfurnished, at three shillings a week; Ings said, perhaps he might bring his goods in in a week; but he never did bring any goods in." This is the whole of her evidence.

Mary Rogers, the mistress and aunt of the last witness, says, "In January last, the two-pair of stairs back-room was let to a person, who turned out to be Ings; he occupied the room four or five weeks, leaving one week unpaid; in the course of that time I made inquiry of Brunt, who and what Ings was, and he told me that he was a butcher, and that he knew nothing more of him than seeing him in a public-house, and hearing him inquire for a lodging; he never brought any furniture in." She says, "on one evening, I saw three men go up stairs, one of them was a black man;" she was not asked, nor did she suggest that person was the prisoner Davidson, but merely that a person of his complexion was one of the men who went up.

The next witness is that important one to whom in passing along I have repeatedly called your attention, Joseph Hale, the apprentice of Brunt. He says, "I lived with Brunt in Fox-court; he occupied two rooms, one as a workshop the other to live in; I slept in the workshop; I remember the back-room on the same floor being occupied in January last by Brunt and Ings; after they had looked at it together, Brunt said to Ings, it will do, go down and give them a shilling, and he went down; I had known Ings about a fortnight before; I saw him twice with Thistlewood in Brunt's workshop in the course of that fortnight; when Ings had taken the room, in the evening he came and asked Mrs. Brunt for the key, and she gave it him; he and Hall came together, and I believe other persons came there that night; my master was taken up on the 24th of February; from the time that the room was taken till that time, there were meetings held in that room; they were mostly held about seven o'clock in the evening; at those meetings I have seen Thistlewood, Ings, Davidson the prisoner, Brunt, Bradburn, Adams, Strange, Potter, Hall, Edwards, and Tidd. Tidd often came there. I was once at his lodgings in the Hole-in-the-wall passage, Brook's-market; the door of that room at Brunt's was sometimes open when I passed it; and upon one occasion, I saw some long poles like branches of trees, rough as they came from the tree about twenty in number; during the time the room was used in that way, I have heard hammering and sawing in it. On the Sunday before my master was taken up, there was a meeting in that room in the morning; I believe it was a larger one

than usual; the persons whom I have named were there, and I am particularly sure that Tidd was there, and Davidson also;" you will bear that in your recollection, not only as it goes to confirm the testimony of Adams, but as it will assist you in taking into consideration that which you have heard to-day from the prisoners at the bar in their own defence; "they went away one or two at a time; my master was in the room with them; and after the meeting broke up, Strange came out with him, and they went into my master's room. There were meetings on the Monday and Tuesday in that back room, and on the Wednesday there were a number of persons there. About two o'clock, Strange and a person whom I did not know, came into our workshop; they were flinting five or six pistols, and there were persons overlooking them; the stranger observed that. Brunt told them to go into the back room, which they did." Now this witness has had no opportunity of concerting any story with Adams; you will ask yourselves, whether this is not a most important confirmation, not only as it respects the general story of Adams, but as it respects the parties engaged in this conspiracy, and the share they were taking in it in the course of the night, when proceeding forth to the rendezvous in Cato-street, for that great work they had called the west-end job. Then he says, "in the course of the afternoon there were several persons in the back-room; and Thistlewood came out and asked for a piece of writing paper, which I gave him, and he went into the back room with it. After that Brunt came out, and told me to go and get six sheets of cartridge paper. I went and bought them, and gave them to him, and he took them into the back room; my master went out about six o'clock; after this my mistress wanted her table for tea, which was ordinarily in our living room." They had in that room the table out of Brunt's living room which on ordinary occasions they had not, and you will recollect, that he tells you that Thistlewood asked him for writing paper, and that they had at that meeting cartridge paper also. "After some of the men were gone, my mistress sent me to the back-room to get the table." He did not go in and get it, because he knew there were people still there. "I knocked at the door, and Potter opened it, and gave me the table out. After this, Tidd called, and came into Mrs. Brunt's room, and Mrs. Brunt shewed him a pike-head and a sword, which hung in one of the cupboards, and asked him what she could do with them; he said, if she would give them to him, he would take them away, and he took them away from the front living room into the back-room." He says "after that I heard persons go down stairs from that room, and after that a person came and told my mistress, that if any persons called, she was to send them to the White Hart, which is a public-house close by; shortly after that, three persons came, and my mistress directed them to the White Hart; they did not

know the way, and I went and shewed them the way; when I came back, and had been at the door about two or three minutes, Potter came up, and I directed him to the White Hart also; there were other persons with him; I did not go with them, as Potter appeared to know the way; they went away." This is the whole of what he states previous to that which we now know to have been the transaction which took place in Cato-street. "About nine o'clock in the evening," he says, "Brunt came home, the tail of his great coat and his boots were very muddy; he said to his wife, it is all up, or words to that effect; he appeared confused. He said, he had saved his life, and that was all; that where he had been, a lot of officers came in. Afterwards, another person, a stranger to me, came in, and Brunt shook hands with him, and asked him, if he knew who had informed? and he replied, No, he did not. From the manner of speaking to each other, it appeared to me that they had been together. The stranger said, he had had a dreadful blow upon his side, and that he was knocked down; and my master said, there is something to be done yet. After this conversation, they both went away together;" it was apparent that what had happened to each of them had passed at the same place, and that the conversation as to who had informed related to the same transaction, in which they had both been parties, so that this man had been knocked down and injured at the place where he stated that the officers had come in, and he had only saved his life. Then he says, "after they were gone, Mrs. Brunt and I went into the back room, and I saw in the cupboard some rolls of brown paper, with tar in them, and four large balls made of string tarred, as big as my two fists," some of those things which have been presented to you by serjeant Hanson. "I have heard since that they are hand-grenades. I also saw some flannel bags, two of them were full of something, the others were empty, and some cartridge paper, and an iron pot belonging to Brunt," for the purpose of heating the materials. "Mrs. Brunt and I left them where we found them. Brunt came home about eleven o'clock at night; before he went to bed, he told me to get up as soon as I could in the morning and clean his boots, and I did so; he afterwards asked me, if I knew the Borough? and I told him, yes; he then asked me if I knew Snow's-fields? and I said, no; he told me, to go to Kirby-street, Snow's-fields, to a man of the name of Potter; he said, I was to take the things that were in the back room; we went into the room together, with two rush baskets; and he told me to put in the things that were in the cupboard, and that I had seen there before, into the two baskets, which I did. After that, one of the baskets was tied up in a blue apron belonging to Mrs. Brunt, which had for some time before been used as a curtain to the window of the back room; the other basket was not tied up in any thing; we went into Brunt's room, and

while we were there looking out for something to tie the other basket in, two officers came in and took Brunt into custody, and took possession of the two baskets containing the things and the iron pot." I think that is the whole of his evidence in chief.

On his cross-examination, he is asked, if he knows a man of the name of Dwyer? and he says, no; then he says, "I know Adams and Edwards; they were often at Brunt's; but I was not near enough to hear their voices when they spoke. When the others addressed Thistlewood, they sometimes called him T. and sometimes Arthur; the rest used to call each other by their names. I have often heard a man called by his christian name, and sometimes by the first letter of his surname. Edwards was there oftener than Adams."

This is the whole of the testimony given you by this person: and no attempt is made to break in upon his credit, by shewing that he had been let into the dangerous secret; but being employed in his master's business as an apprentice, he became from that circumstance acquainted with the fact that there had been, for a considerable time before, secret meetings in that room, taken for fairs the butcher; that at that room there were such implements as those found afterwards at Cato-street, and at the lodgings of Tidd; that there were pikes, hand-grenades, and pike-staves, and that there were swords, which might well proceed from some person engaged in the preparing them in a further state of manufacture to make them fit for use; the sawing off their ends, and preparing them to receive the pike heads, which have now been produced before you, and which appear applicable to those staves; besides that, he shews you that on that very afternoon on which they were proceeding to that ultimate object, whatever it was, these persons were proceeding exactly in the manner in which Adams has stated. Adams, you know, was examined not in his hearing; has been in custody ever since the Friday; and who, therefore, has had no intercourse whatever with this witness. He has confirmed, almost in words, some of the most important parts of the transaction stated by Adams to have taken place at Brunt's, on more occasions than one; it will be for you to ask yourselves, whether, if the case rested here, and the question to be propounded to you was, whether you believed the story told by Adams, it had or had not received such confirmation from unsuspected quarters, from the mistress of the house and her servant, and from the apprentice of Brunt, as to induce you to believe that it was true, and that it was not invented—invented for the purpose of implicating in guilt eleven men, and subjecting them to the forfeiture of their lives: it is for you to consider, whether it be, as it is presented to your minds and consciences, a fiction and an invention, or the narration of truth, though communicated to you by the mouth of an accomplice. It is fit to observe on that, in passing, that unless by

some spirit of intuition, it seems impossible that Hale should have been found in such a coincidence as to the persons present—the things exhibited—the transactions on the various days on which those persons met—the instructions with respect to other persons expected to call, persons calling afterwards, and the instructions given to them accordingly—the conducting some and directing others to the place at which they were likely to find those for whom they were inquiring: it is impossible, as it appears to me (but it is for you to exercise your judgment upon it), that this story of Hale's should have so wonderful and extraordinary a coincidence with the facts narrated by Adams, not communicated to Hale down to the moment of his examination before you on trial, unless each of those persons were telling that which each for himself observed.

They then proceed to call to you other witnesses, in order to give confirmation to the testimony of the accomplice, Adams; the first is a person of the name of Thomas Smart, a watchman in St. George's, Hanover-square; he tells you, that on Tuesday the 22nd of February, in taking his walks in Grosvenor-square, about half-past eight, he observed four men; he says, "they were looking through the palisades; they stood at the corner, when I went up to them at Mr. Maberley's house; they were at that time looking about, and I went up to see what they wanted; they asked me what o'clock it was, and I told them it was near nine. I thought they were very suspicious characters, one of them had a stick, one was a man of colour; I called Bissix, who was also a watchman there, to make observation, telling him I saw some suspicious characters." This witness does not affect at all to have any knowledge of the prisoner Davidson; therefore, it might be for any thing this witness knows, any other person of his complexion.

Bissix is then called, and he tells you that he was a watchman in Grosvenor-square on the night of the 22nd of February; he says "Smart was there at the same time; I saw two men in the square that attracted my notice, they passed us and asked what time it was; we told them it was near nine o'clock, and they passed along; they took particular notice of Lord Harrowby's house, and some other houses in the square; and one of them, a man of colour, had a stick in his hand, larger than persons usually have."

The use that is made of this is to confirm the narrative given you by Adams; that in consequence of his communication of the impression which Hobbs had instilled into him, that there were suspicions afloat in the minds of the police officers and the secretary of state, that something was wrong, it was determined a watch should be set and relieved from time to time; Adams tells you, that the prisoner Davidson was one of that watch; the two watchmen tell you, not indeed that Davidson was one of that watch, but that there were persons there whose appearance, whose conduct, whose

demeanor, created suspicion in their minds, and was of a nature inducing them to believe that they were persons watching lord Harrowby's house and other houses, to see what was going in and coming out of those houses, corresponding with the account given that a watch was set to enable the committee to come to a determination whether they were betrayed or not, by perceiving whether soldiers or police officers were introduced into that neighbourhood, aye or no; these witnesses prove, that one of the persons on that watch was a man of colour, who might have been, but is not proved to be, the prisoner Davidson; I say, though it would have gone higher, if they could have identified Davidson to be one of that watch, yet it is a strong confirmation of the witness Adams, that there was a watch, and that one of the men so watching, was a man of colour.

The next witness that they call to you is Henry Gillan; he says, he lives at No. 15, Mount-street, Berkeley-square; and nobody has urged an observation that is discreditable to him; nobody suspects that he has done any thing which ought to bring his testimony into discredit; he stands before you then a person as well entitled to credit, for any thing that appears in this cause, as any one of you would, if you were to be sworn in court. The account he gives is that he sometimes at his leisure went into a public-house called the Rising Sun; he says, "I was there on the 22nd of February last; the house is situated at the corner of Adams-mews and Charles-street: I was there in the evening between nine and ten o'clock; I saw Adams and Brunt come in:" Now you will recollect what Adams has said about this; Tidd was to have gone with Brunt to relieve Davidson and the first watch; but Brunt came back, and said, that Tidd had met with a man of too much importance to part with, and that therefore somebody else must be substituted in his place; I was the man substituted in his place, and I went with Brunt; we went to our watch, but not thinking it necessary to be upon the watch every moment, we relieved ourselves from the fatigue of that watch by going into a public-house, and not only that, but to avoid being ourselves too much the objects of observation; we had some refreshment, bread and cheese and beer, and Brunt played two games of dominos with a young man in that house, who was a stranger to Adams, down to the very moment of his being examined here. Those who had the care of the interests of the public in conducting this prosecution, probably went to the public-house and so traced out this young man. He says, "I saw two men there;" Who were those two men? "Brunt and Adams." Did Brunt go there as a watchman that night? Did Adams go there as a watchman that night? Were they there during the period which Adams speaks of? Ask this young man, an unsuspected witness; "I played two games at dominos with Brunt; I left the house at near ten o'clock, leaving them in

that house." They submit to you on the part of the prosecution, that this is a most important circumstance, in order to give confirmation to the testimony of Adams, not in some circumstances quite collateral to the subject of our present inquiry, but intimately connected with one of those transactions of that night, which had for its object to enable the conspirators to determine, whether they should go on to the completion of their object, or should retire from it, on the conviction that they were suspected, and that precautions were taken.

They then call to you a person of the name of John Hector Morrison;—he tells you that he is a journeyman to Mr. Underwood, of Drury-lane, a cutler; he says, "Ings brought a sword to me to be ground, on Christmas eve; he gave me directions, that it was to be ground from the heel to the point, and also the back to be ground, which was done for him;" he says, "he fetched the sword away himself; he employed me again afterwards; he brought me another to be ground as the first was, which was done and delivered to him;" it was sharp to the extreme, and that which a cutler's art could put upon it appears to have been made still more destructive and more mischievous by having been sharpened highly upon a stone, or a steel, after it passed out of his hand. The Crown submit to you that this is a strong circumstance to support the testimony of the accomplice; he has told you Ings was armed with such an instrument as this, and the cutler tells you, that he received it from Ings, with this remarkable instruction, and that he afterwards brought another, which has not been identified before you, but probably your minds have been directed to that by a part of the melancholy transaction. You may, perhaps, conjecture, that the sword used in the destruction of the officer, in Cato-street, may be that which was thus sharpened, and you may, perhaps, think it not difficult to account for the non-production of it here to day, by supposing that it was the instrument used on that occasion; it is not, however, proved to you that it was, nor is it of importance, and therefore you may dismiss that from your consideration.

They then call to you Edward Simpson;—he says, "I am corporal-major of the second regiment of Life-guards; I know the prisoner Harrison perfectly well; he was in that regiment upwards of five years; his regimental duty made him acquainted with the King-street barracks; there were five windows in those barracks looking out of the loft into Gloucester-mews; they are stopped up now; they were stopped up two or three days after the affair in Cato-street; the lofts contained hay and straw chiefly, and by throwing any thing in at the windows, particularly opposite where the straw was lodged, it was possible to produce a fire; there were two or three loads of straw there at that time at the least, in a situation which might have been reached by a fire-ball going in at the window, as they were situated about four feet from the window."

It is stated by serjeant Hanson, that one of those fire-grenades thrown into the window of this room, which would have burnt for three or four minutes in a blaze, and afterwards have deposited upon the hay and straw a red-hot body of fire, would have been vastly more than sufficient to have destroyed all the contents of the lofts of that barrack, and probably to have effected that purpose which is stated to have been recommended by Harrison, and to have been adopted by the conspirators.

Then a witness of the name of Aldous, says, "I am a pawnbroker; I have known the prisoner Davidson for two or three years; he pawned with me a brass-barrelled blunderbuss, and he took it out of pawn on the 23rd of February in the morning," the day to which your attention has been so constantly addressed. "I have since seen it in the hands of Mr. Ruthven, the officer." It is produced among the articles found in Cato-street, or by some of the officers; he looks at it now, and he identifies it. They desire you, upon the part of the prosecution, to ask yourselves, whether this affords to you any probability that the testimony of Adams is true, and gives any corroboration to the narrative he has given you. When you find that a brass-barrelled blunderbuss, which had been pledged by the prisoner Davidson, in January, and redeemed by him on the 23rd of February, formed part of the magazine intended for the exploit of the 23rd of February, proceeding from Cato-street, I think you will probably consider that a strong confirmation of the narrative stated by the accomplice Adams.

They then call to you a witness of the name of John Monument;—he states that he is a prisoner in the Tower; and the observations which have been made (and which cannot be too often pressed in favour of prisoners standing in this situation) apply likewise to the testimony of Monument; for though you will perhaps think, he was not so deeply embarked in the conspiracy as Adams, yet still he must be taken, for the purposes of this inquiry, to be an accomplice, and therefore not to be received but with jealousy and suspicion, and to be attended to only as the evidence he gives is corroborated and supported. The account he gives is, that he is a shoemaker, living in Garden-court, Baldwin's-gardens. He says, "I know a person of the name of Ford; I recollect seeing Thistlewood at Ford's, it was about three months before I was apprehended; in consequence of seeing Thistlewood at Ford's, he afterwards called upon me in company with Brunt; my brother and my mother were in the room at the time; after he had been in the room some short time, he said he wished to speak to me; in consequence of that intimation, I went out of the room with him, leaving my brother and Brunt in the room; my brother's name is Thomas Monument. When we got out, Thistlewood said, great events were at hand, the people were everywhere anxious for a change; that he had been promised support

by a great many who had deceived him, but that now he had got men who would stand by him. He asked me, whether I had any arms, I said no; he said, every man ought to have arms, all of us have arms, or to that effect; some have got a sabre, some have got a pistol, and some have got a pike, every one has got something; he said, I could buy a pistol for about four or five shillings. I told him, I had no money to buy pistols with; and he said, well, he would see what he could do. He then said, that the man he brought with him was in the same line of business with myself, a boot-closer, and that he lived in a court in Gray's-inn-lane. We returned into the room, and found Brunt there, and Thistlewood and Brunt shortly afterwards went away; I lighted them down stairs, and Brunt gave me his address. On Tuesday, the 22nd of February, Brunt called upon me with Tidd, the prisoner; I said to Brunt, I thought I had lost you;" he had not seen him for a considerable length of time, a couple of months or more. "He said, the king's death had made an alteration in their plans; I asked him what plans; he said, there was to be a meeting the following evening up at Tyburn-turnpike, and we should hear all about it; then he turned to Tidd, and asked him, if he should give me the word? he said, yes, he supposed there would be no danger in it; and then Brunt said, when I came to the place, Tyburn-turnpike, if I saw any people about, I was to say, *b, u, t*, and if they were friends they would answer, *t, o, n*; he said, he should be at our house the following morning to tell me all about it, and at what time it was to take place, and went away with Tidd, leaving me and my brother together." He says, "Brunt came alone, about half past four the next day; my brother was with me; he called me down stairs; he said he wanted me to go in half an hour; I told him I could not, for that I had some work to finish, which must be done before I went; he asked me what time it would be done; I said about six; he said he could not wait so long as that, but that I must go with the person whom he had brought the day before; he told me that his name was Tidd, and that he lived at Hole-in-the-wall Passage, Brook's-market; I went to Tidd's lodgings about half-past six, and found him there; he said he had been waiting for some more men, whom he expected to go with him, and that if no one else came before seven o'clock, he would not wait any longer; he says, no more did arrive, and I asked him, where it was we were going to? He said, to a mews in the Edgeware-road; Tidd went to a corner of the room, and took a pistol out of a box, and put it into a belt which was round his body; he took also about six or eight pike-heads, wrapped up in paper, which appeared to me to be three square, like bayonets; then he took a staff of about four feet long, with a hole at the end of it, as if to put a pike in; after he had thus provided himself, we went out together; we went down into Holborn,

he tried it, and found, when he took it to Bow-street, that it was one which had been recently discharged, for there was the moisture produced by a recent discharge.

Then John Muddock was called, and he stated, "I am a soldier in the Coldstream regiment of guards; I was one of the party that went to Cato-street; I recollect seeing a man near the stable door; I saw him the next day at Whitehall, and I found his name to be Tidd;" then he pointed him out; "he presented a pistol at lieutenant Fitzclarence; he fired it off, and I saw serjeant Legg secure him afterwards; after this I went towards the stable door, and I saw a person cut with a sword at lieutenant Fitzclarence; he went in again, and I did not see who he was, and afterwards Mr. Fitzclarence attacked them, and went in at the door, and I followed him in; after I had got into the centre of the room, the prisoner Wilson presented a pistol at my breast; it flashed in the pan but did not discharge; I made a stab at him with my bayonet; I secured him, and took him to a public-house, where I looked at him by a light; I now see the same person at the bar."

Then William Legg is called; he says, "I am a serjeant in the Coldstream-guards; I was one of the party that went under the command of lieutenant Fitzclarence on the night of the 23rd of February to Cato-street; I observed a man standing with his back against the wall, between the gateway leading out of John-street and the stable door; he had a pistol in his hand, and he levelled it at lieutenant Fitzclarence, who was about a yard and a half at the head of me; upon my observing that, I knocked the pistol aside with a pike, and seized the muzzle end of the pistol with my left hand; a scuffle upon that ensued between the man and me, and the pistol went off in the scuffle; whatever the pistol was loaded with, tore the sleeve of the jacket of the right arm; as soon as the pistol went off, he let it go easily, and I secured him, and delivered him over to the police officers; that man was Tidd; I saw him afterwards, and I have seen him since; I then went into the stable, and up into the loft; the persons who were in the loft had surrendered when I got there to part of the piquet; I assisted in securing some of the arms that were taken in the loft."

Then Lieutenant Fitzclarence is called, who says, "I am a lieutenant in the Coldstream-guards; I was applied to on the evening of the 23rd of February to send a piquet to John-street; I accompanied that piquet; when I got to John-street, my attention was attracted by the report of fire arms; I brought my piquet forwards towards Cato-street; on getting to the archway leading into Cato-street, I met a police officer, who was calling out 'soldiers, soldiers! the stable door!' I made towards it, and the moment I got to the door I met two men, one of them presented a pistol, and the other cut at me with a sword; we exchanged several cuts; he seeing the body of

the piquet coming up, ran into the stable, and I followed him; on entering the stable, I came up to one man, who said, 'do not kill me, and I will tell you all,' it turned out afterwards that that was Monument; "I gave him in charge, and then returned and took out another man, and the soldiers took him away; I then led the men up into the loft, and there I found three four or five men, and a large quantity of arms, consisting of blunderbusses, pistols, and pikes; I assisted in securing the persons in the loft, and the arms."

Upon his cross-examination, he says, "I took Davidson into custody; he was taken to Bow-street, having been first brought into the stable in Cato-street; I do not know that in proceeding from the stable he was taken into any public-house, or any other house; I will not be certain that he was not taken into the Horse and Groom; Tidd and another person were there; but I think," lieutenant Fitzclarence added, "he was not to my knowledge, in the Horse and Groom, nor in a public-house, till he was carried to Bow-street."

The next witness called is William Westcott, who says, "I am one of the Bow-street patrol; I went to Cato-street on the 23rd of February; on going up I saw Ings, one of the prisoners, at the foot of the ladder."

Then John Wright is called, who says, "I am one of the Bow-street patrol; I went up to the foot of the ladder in the stable in Cato-street; I saw a stoutish man standing there; I took from him a butcher's knife and a sword; there was wax-end twisted round the handle of the knife; that knife is in the possession of the officer; immediately afterwards I was knocked down, and received a stab in my right side, and that man made his escape from me; Ings was immediately afterwards brought back in custody."

John Champion, who is also one of the Bow-street patrol, says "I was at the stable in Cato-street on the night of the 23rd; I saw Ings at the foot of the ladder; on the officers appearing, he said, 'look out above there'; he afterwards made his escape; Brooks afterwards came up, bringing him in custody; we took him to Mary-le-bone watch-house, and searched him there; we found two haversacks slung across his shoulders under his great coat, a tin case nearly full of powder, three pistol balls, a knife case, and a belt round his breast; the knife-case was made of cloth, for a large knife; there is a knife wrapped round with wax-end, which fits it, and which is in it now."

Then William Charles Brookes is called; he says, "I am one of the Bow-street patrol; I met a man running in John-street on the night of the 23rd; he presented a pistol at me and fired it; the ball went through my clothes, bruised my shoulder, and grazed my neck; I staggered into the street, and the man ran on; he was afterwards laid hold of by Moay, a watchman; I searched him in the watch-house, and took from him two haversacks, a belt round his body, and a tin case nearly full of powder;

I asked him how he came to fire at me, a man he had never seen before; and he damned me, and said he wished he had killed me, as he wanted to do."

They then called Samuel Hercules Taunton, another of the officers, who says, "on the morning of the 24th of February, I went to Brunt's lodgings, to apprehend him; I took him in the front two-pair of stairs room; I found there two rush baskets, an iron pot and a pike-staff; I asked him about the back room, and he denied its being his apartment; I then called up the landlady, and asked her whose it was; she, in his presence, said the lodgings were let in his presence to a man, but she did not know what his name was; I asked Brunt who he was, and he said he had only seen him once at a public-house, and he did not know who he was; I then went to Tidd's lodging, in Hole-in-the-wall passage, and found some articles of ammunition;" which are now lying on the table, and enumerated in that list which I shall by and by state to you.

Daniel Bishop, another Bow-street officer, tells you that he apprehended Thistlewood on Thursday the 24th of February, between ten and eleven in the morning; he says, "I found him at the house of a Mrs. Harris, No. 8, White-street, Moor-fields; he was then in bed, with his breeches and stockings on, and his coat and waistcoat by the bed-side; in the pockets I found three leaden balls, a ball-cartridge, two flints, and a small silk sash; I took him to Bow-street, and then to the Secretary of State's."

On his cross-examination, he says, that several of the patrol went with him to apprehend Thistlewood, and that they surrounded the house before they entered it, for fear of mischief. This was all the evidence given to you yesterday.

Then, gentlemen, they have this day again called before you, Ruthven, the officer, who says, "there are now upon the table the arms and ammunition found in Cato-street; there were six more hand-grenades than there are here, which have been opened in the course of the investigations; the pike staves were ferruled at the time they were found; but some of the ferrules have dropped off, in consequence, as I suppose, of the greenness of the wood; some of the pike-heads are files sharpened, and others are bayonets; the poles are bored for the pike-heads to screw in; the hand-grenades were all fitted with fuses." Then he points out the haversacks and the belt, the knife and the knife-case, found upon Ings. He then verifies a list, which he says he made out, of the various articles; thirty-eight ball-cartridges, firelock and bayonet, one powder-flask, three pistols, one sword, six bayonet spikes and cloth belt, one blunderbuss, pistol, fourteen bayonet-spikes and three pointed files, one bayonet, one bayonet-spike and one sword scabbard, one carbine and bayonet, two swords, one bullet, ten hand-grenades, two fire-balls, one large grenade and bayonet, rope-ladder,

one sword-stick, forty ball-cartridges and one bayonet, three loose balls;" these were all found in the loft. "In the stable, in the pocket of Bradburn, six ball-cartridges, three balls and some string put round him to act as a belt; the pistol which it is alleged that Tidd fired, the pistol which it is alleged that Wilson attempted to fire, blunderbuss, sword, belt and scabbard, one pistol, one sword, twelve sticks with ferrules. In the pocket of Tidd, two ball-cartridges, and round him a leather belt; two ball-cartridges facing the stable, and ten ditto in Newnham-street; one musket cut down, and one sword from Davidson, one haversack, cross belts, one pricker, bayonet, scabbard, cartouche-box, and a belt round his body; two haversacks, one belt and tin." The remainder of the enumeration of the articles I would read to you, if there was any thing in it that tended to the benefit of the prisoners; but my learned brother suggests, that probably you have so good a recollection of the enumeration of the articles which are exhibited before you, that you may not perhaps think it necessary that I should go through it again.

Foreman of the Jury.—No, my lord, it is not at all necessary.

Mr. Baron Garrow.—Then, gentlemen, this being the enumeration of the articles, the witness says, "the stick that was found in the public house was the one left by Cooper, and afterwards asked for by Gilchrist."

John Hector Morison is then called again, and a sword being shewn to him, he says, "this is the sword that was brought for me to grind; my directions were, to grind it on both sides, and to make the point as sharp as a needle; it is particularly sharp." I asked him if that was the one he called a scimitar, and he says, "they are both of a similar shape;" then he says, "since it left me the edge has been made much keener by sharpening it with a steel or a stone, I cannot exactly say which."

Then Benjamin Gill is called again, and selects the carbine and sword taken from Davidson, from the arms which are upon the table; he had stated, that he believed there was a string attached to the sword taken from Davidson, and the one produced has such a string; "the carbine was not loaded when I took possession of it, because he had discharged it at me before I took it to Bow-street, it was quite damp."

Ruthven is again called, and he says, "the greater part of the fire-arms were loaded when we took them; we had them drawn for the purpose of being produced here; they were loaded with ball, with the exception of one gun, which had large shot."

Then Mr. Aldous, the pawnbroker, is called again, and having looked at the blunderbuss produced to him, he states, that he believes it to be the same that was taken out of pawn by Davidson, on the 23rd of February. Being asked by the the prisoner Davidson whether

cution, they say further, that the testimony of Monument, if believed, goes to prove the whole, namely, that there had been a conspiracy of a certain number of persons, of whom these persons were part, by force of arms, and by rising in the town, and by the destruction of his majesty's then confidential ministers, to compel his majesty to change his measures, or to bring about a destruction of the constitution by rebellion and revolution. They say, you may infer this from the testimony of Monument, if for the moment you were to forget altogether the testimony of Adams, remembering always that you ought to deal with the testimony of Monument as you have been advised with the testimony of Adams,—to receive it with care and caution, and to receive it only as it is supported in such manner as to give to it the effect of truth, and not to convince you that it is not the result of invention.

Now to support his evidence, they call before you Thomas Monument; with respect to whom it is but fitting I should state, that there is not a single imputation on his character. He says, "I am a shoemaker, and live with my brother; I recollect Thistlewood calling upon him at his lodgings, accompanied by Brunt. Thistlewood said, he wished to speak to my brother; they went out together;" leaving Brunt with the witness; "they returned in three or four minutes; and Thistlewood and Brunt went away together. On the 22nd of February, Brunt called upon my brother in company with Tidd the prisoner; my brother said, I thought I had lost you." Now these brothers had had no opportunity, since John was taken into custody in Cato-street, of comparing notes, and yet you will perceive there is an extraordinary coincidence in the narrative they give of the visit of these two persons to John Monument. "Brunt said something concerning the king's death, which had made an alteration in their plans; my brother asked him what the plan was; he said they had different objects in view. Brunt asked Tidd if he should give an outline of the plan; I did not bear any answer to that; Brunt said, we were to meet the following evening at six o'clock at Tyburn-turnpike, and he gave the pass word that we were to use, the letters *b, n, t*; and if any of their party were there, they would answer *t, o, n*." Now so says the accomplice John Monument; and the accomplice John Monument tells you that was so communicated in the presence of his brother, when these persons were there that evening. I have already told you these two brothers have not been together since that evening; you will therefore ask, whether the accomplice, when he gives that account, confirmed as he is by the other witness, is giving you the language of falsehood or of truth? "Brunt came the next afternoon between four and five o'clock; my brother could not go with him as he had some work to finish. Brunt then said, you must call on Tidd in Hole-in-the-wall passage, and he will take you; I believe

my brother went about seven o'clock; I did not see him afterwards; I did not go myself. This man's character stands as fair in the transaction as any man's whatever. Now, is the account John Monument has been giving to you, the language of truth or not? if it were necessary to prove the fact that John Monument was invited to go, that he was directed to go to Tidd's house; that he had the word *button* given to him as the pass word; that they were directed to go to Tyburn-turnpike; if they were to sink John Monument in the bottom of the sea, they could prove the whole by that brother.

Tidd.—My lord, you have just observed, as to these witnesses, that they never saw each other; now I can prove, by the evidence of the warden of the Tower of London, that they have been together an hour or two together in each week.

Mr. Baron Garrow.—I am very glad you have made the observation; if that fact be so, which was unknown to me, that takes off the effect of so much of the observation as applies to the similarity of manner in which they have told the story, and it stands just the same as if there was no such fact. This man is confirmed by a man who may have heard it from his brother, but who comes here pledging his oath, his soul, and his salvation, and that which he states is precisely that which his accomplice brother has stated.

Davidson.—My lord, here is Mr. Underwood, one of the yeoman warders, can speak to the fact of their having been together.

Mr. Baron Garrow.—We will take the fact to be so. You will observe, gentlemen, that breaks in only on the observation, which had struck me very forcibly; as to Adams and John Monument it stands precisely the same, but you will take it with the circumstance the prisoner has mentioned, though it is not proved; that I think is the whole of the evidence of Thomas Monument.

They then call to you a witness, certainly of the highest importance, and that is Thomas Hiden; he says, that previous to these transactions he lived in Manchester-mews, and was a cowkeeper and milkman there; he says, "I have now the misfortune to be a prisoner for debt;" he is brought here by his majesty's writ of habeas corpus; "I went to prison a week ago, last Saturday morning; I know the prisoner Wilson very well; a few days before the 23rd of February he met me, and asked me if I would make one of a party to destroy all his majesty's ministers at a cabinet dinner; he said, every thing was ready, they were waiting only for a cabinet dinner, and that they had got such things as I never saw; that they were covered with tarpaulin, and bound round with cords, filled full of nails and other things, some of them made of tin, and very strong indeed; he said the strength of them was so great, that if they were set fire to and put under the walls

other things, left at our house, which was never, to my knowledge, uncorded during the time it remained, which was till the morning of the 24th, when the officers took it away; what it contained I do not know." You will probably not wonder, that the learned counsel for the Crown did not address any question to the witness, because it was undoubtedly true, as was stated in the reply, that if the case had remained short on the part of the prosecution, much confirmation would be derived from the testimony of this unhappy person, called in order to effect the security of her near relative; I shall make no further observation upon it; that is undoubtedly well justified.

Thomas Chambers is the next witness; he says, "I live at No. 3, Heathcock-court, in the Strand; I know Adams; I remember the day when the people were taken up in Cato-street; he called upon me twice, about a week before, in company with Edwards; Edwards asked me, in the presence of Adams, if I would go along with them; I asked them where; he said I was not such a fool as not to know there was something on foot; I replied, I did not; Adams said, we are going to kill his majesty's ministers, and we will have blood and wine for supper; Edwards replied, by God, Adams, you are right, it shall be so." He says, "on the Monday before the Cato-street discovery, they both came; they had a bag with them; they asked me to let them leave it there; I asked what it contained, and Adams said, only a few pistols and such like; a man named Tunbridge was there at the time. I refused to let them leave it, and I never saw them afterwards."

Some questions are addressed to him on cross-examination, and in answer to them, he says, "I do not know what book I was sworn upon; I never took an oath but once, before I came here the other day; this is the third time; it is a Prayer-book, I should suppose. I am a churchman; I believe in Christianity, and have always said so; I always believed in the Bible, and was brought up to the church; I never saw Paine's works. I know both the prisoners at the bar; I have known Davidson since about the time of Mr. Hunt's procession; I have only known Tidd in the trade, we are brother shoemakers; I cannot say how long I have known him, whether twelve or nine or six months. I did not particularly know him at the time of Hunt's procession." Upon being pressed as to how long he had known him, he says, "it might be at some of the meetings in Smithfield; I attended every meeting that was held openly in the air; I carried banners; I cannot say but that I might have walked in the procession with some of the prisoners who are indicted. I know Ings and Brunt and Wilson, and I know Harrison very well; I do not know Bradburn so well, but I do know him." Then he is asked whether he went to any of the Smithfield meetings in company with any of these persons, and he says, "I cannot say, they might be there; I had no weapon at the

Smithfield meeting; I carried no pistol in my pocket, nor do I know that any body else had any; I have known Thistlewood ever since Mr. Hunt's procession; he has been at my place repeatedly since, for I took home the flags, and he has been there to fetch them, and to distribute them to those who were to take them. I have seen him since, on one Sunday evening, at the Black Dog in Gray's-inn-lane. I know the White Lion in Wych-street very well; I have attended meetings there; there is no name to the meeting, except that it is a meeting of reformers; I had no number or section. I saw Thistlewood at the Smithfield meeting, when Mr. Hunt was in the waggon; I was always in the waggon; I cannot say who else was there, there were thousands I believe; I do not think I saw Davidson there." Then he is asked whether he thought they were such ferocious monsters as were going to commit assassination, and he says, "Yes, but I did not consider they would get fools enough to do it; I considered myself a fool, but not so big a fool as that; I never heard a man say a word against his majesty's ministers, except those men, Edwards and Adams; I thought the thing so preposterous and absurd, that no man would be found foolish enough to do it. I first met with Ings at a shop where pamphlets were sold; I only read Mr. Cobbett's works; I have got plenty of them."

Then they called another witness, John Bennett; he says, "I live at No. 4, Little Park-lane, New-street, Mary-le-bone; I am a bricklayer by trade; I know Hiden, he has called upon me, and asked me to accompany him to private radical meetings; he has endeavoured to persuade me to accompany him more than ten times; he did not tell me any thing was to be done there, but only requested me to go with him, and I might sit and see and hear, and say nothing unless I chose; I never did accompany him, nor ever went to any radical meetings, either private or public."

This is all the evidence called on the part of the prisoners to any facts.

They then proceed to call witnesses to the respective characters of the prisoners. For the prisoner, Davidson, the first witness they call is Isaac Cook, who says "I live in Charlotte-street Blackfriars'-road; I have known Davidson about six years; about six years ago he worked as a journeyman for me in the cabinet line, and he has since occasionally called at my house in the way of business; at the time he worked for me, he was a very honest hard-working industrious man, but I have not known sufficiently of him since to speak to his character."

For the prisoner Tidd, they call Stephen Hales, who keeps a grocer's shop at No. 17, Bell-court, Gray's-inn-lane; he says, "I have known Tidd about fifteen months, and during that time I never saw any thing in his conduct treasonable, or that looked like conspiracy; he was a very prudent and industrious man,

It has been suggested to you that the testimony of this witness ought not to receive credit at your hands. I have listened with all the attention which it is my duty to do, to the very able argument. I do not say that as a word of course, or of compliment; this is not the place so to deal with these cases, but because it is due to the great exertions made for these unhappy men to say that every thing has been done which great care, great learning, and great talent, could do for them. But it is said, that this evidence ought not to receive credit at your hands. I have endeavoured to understand this argument, and I state, unfeignedly, under the solemn sanction on which I am called to perform the solemn duty cast upon me (the same sanction under which you are called upon to discharge the duty lying upon you) I cannot understand the argument. If it is suggested, that it is an extraordinary thing that a man should communicate to another a plot of an extraordinary nature, the answer to the observation is upon the surface,—this was a thing which must be done, if at all, by many, and must be done by canvassing many, some of whom may become accessaries to the thing proposed, and others may decline to have to do with it; but a man does not purpose to become an active member of a confederacy, but wishes to be acquainted with it, and having got information of it, thinking there is danger to his own life if he apparently or avowedly testifies a disposition to retract, he is told that the persons who may retire shall be murdered; I cannot understand, that a man who shall not disclose such a combination, shall be a person, who, when he comes under the exigencies and demands of justice, and under the solemn sanction of his oath, to state this in a court of justice, is not to be believed. But in what situation does this witness stand? He has heard this, does he conceal it, and, as far as depends upon him, allow it to have complete effect? With an anxiety which does him infinite credit,—with an anxiety to make that which, for aught he knew, might be the only communication which stood between the eminent peril of the destruction of those eminent men, and the accomplishment of that blow; he became anxious to make the communication to one of his majesty's administration, probably more known to him by name, because more seen as the minister in the House of Commons; he endeavours to avail himself of any opportunity of delivering a letter to lord Castlereagh, to whom, as we may suppose, he made in substance his present communication, for we cannot look at that letter, not being able to see the noble lord to whom the letter was directed; he addresses himself to lord Harrowby, with respect to whom, it would be disgracing him to suppose such a thing as that he could tamper with, or hold any improper intercourse;—nobody suggests or believes any thing of the sort. This man, finding the difficulty of communicating with lord Castlereagh—these are not times when noblemen in office

are too easy of access to importunate strangers, whose business is mysterious,—he finds his way to the house of lord Harrowby, urged by the desire to communicate the information of this grand stroke intended to be struck; there he watches the person who, by the waiting of the servants at the door, he supposes to be the master of the house, and he way-lays him in the Park, in order that he may make him the medium of communication of his letter to another of the cabinet ministers. My lord Harrowby receives it, and with the care and caution which belongs to all men of honour, even a letter of this sort he does not presume to open when it is addressed to another; but observing that the man who makes this communication to him is afraid of being seen in his company, lord Harrowby says, I will meet you to-morrow; and, on the following day, his lordship passed him on entering the Park, and went down to the shrubbery; in the mean time the letter had been opened, and had been made the subject of communication. What is the conduct of this man? He discloses the whole of the conspiracy, as it has come to his knowledge, of the imminent peril and danger which, according to him, is impending only by a thread over the heads of these persons, and which would branch out, immediately after that catastrophe has been effected, into all the wide-spreading ruin which was intended; is it to be said of such a man as this, that he is not deserving of credit? that there is something vicious—something depraved—something to cut down his credit? if it be so, I should beg to be introduced to the contrast of such a character, to learn who in society is a meritorious member of it.

But it is suggested that he stands here probably with a degree of influence on his mind; that is treated with an uncommon, though not an improper delicacy by the learned counsel, they are obliged to deal with it with so much delicacy, that it is almost lost. Is he a witness coming here to earn a reward? No, that would be high treason against the character of every man of honour in society; but it is said the man thinks he has done the state so much service, and has so much merit with these noblemen, whose lives and whose families he has saved, that he probably thinks he shall derive, at some future period of his life, some reward for the benefit which he has been the instrument of Providence in conferring upon them. Does that enable him to invent a false story? has that enabled him to tell the story Adams has told, or Monument has told, without communication one with the other? did that enable him, before the police officers turned their attention to the stable in Cato-street, or the piequet under the command of lieutenant Fitzclarence turned their steps toward that place, to invent the plot for the assassination of all these persons, to get all this ammunition together in that place? and did this milkman and dairyman find out my lord Castlereagh?—No, he did not, but he

attempted it, and failing, he did find out my lord Harrowby to make to him a communication of all this; in no other way can I see how any inroad is to be made into the testimony of Hiden, to whom, under Providence, probably every one of us assembled here to-day is under no small obligation.

The next witness called before you is John Baker; he says, "I am butler to the earl of Harrowby; I recollect, on the 18th or 19th of February last, issuing cards of invitation to the cabinet ministers to dine at his lordship's house on the 23rd; before that time the cabinet dinners were suspended, in consequence of the late king's death, and that was the first after the king's death; the dinner was prepared, and the preparations went on till after the dinner hour; about eight, the dinner was countermanded; up to that time, I and all the servants expected the dinner would take place; the archbishop of York's house is adjacent to lord Harrowby's; I observed carriages taking up there between six and seven o'clock."

The next witness called is Richard Munday, who says, "I live at No. 3, Cato-street; on the 23rd of February last, when I came from work in the afternoon, I saw Davidson walking to and fro in the gateway, and I saw him running away after the transaction took place; but I had seen him, between that, lighting a candle with another candle in his hand. I saw him push the stable door open and go into it, and I saw Harrison at the door at the time; Davidson's coat flew open as he stooped with his hat over the candle, and I observed a cross-belt round him, and another belt with two pistols and a sword, or something I thought to be a sword; I heard a nailing up in the afternoon, and I looked up and saw some sacking being nailed up over the railing over the door; I thought it was to keep the place warm, being cold weather, but it would keep any person from looking into the room; the stable had been for some time empty; the cows were taken away before Christmas; when I passed by I saw two men go in and three come out."

If Hiden's evidence wanted confirmation—if the presence of Davidson at this place at this time, needed to be confirmed, the testimony of Munday goes the full length of that confirmation.

George Caylock is called, he says, "I live in Cato-street; I saw Harrison there on the 23rd of February; I had known him before; I saw him go into the stable, he told me he had taken two chambers there, and was going to clean them up; I saw from twenty to five-and-twenty other persons go in and out of the stable that evening."

Then Ruthven the officer is called, he says, "I am one of the constables of Bow-street; on the 23rd of February, I went to Cato-street; I went first in the afternoon, and then again at six o'clock; I went into the Horse and Groom, and saw Cooper and Gilchrist there, with a mop-stick or broom-stick, which he left there; Gilchrist came back for it, but I had it;

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the stick had a place in it as if to receive a socket; I went into the stable about half-past eight o'clock; Ellis and Smithers were with me; I observed a man with a gun on his shoulder; I did not know him; I then went up a ladder which led to a loft; I saw a bench with arms upon it, and I heard a clattering of arms; I suppose there were about four or five-and-twenty men; I said, we are officers; seize their arms. Thistlewood, whom I immediately saw, seized a sword, and retired to the inner room; he stood fencing with it, endeavouring to keep any body away that approached him; Smithers approached him; and Thistlewood stabbed him, and he died immediately; after this a pistol was fired, and the lights were put out instantly; I heard a voice from the corner where Thistlewood was, call out, kill them," using a vulgar expression, "throw them down stairs; I joined in the cry, and got down with them; I got out into John-street, and met the soldiers, and returned with lieutenant Fitzclarence; upon returning to the stable door, I saw Tidd endeavouring to get away from the stable door; I said to somebody, lay hold of him, and, as I spoke, he held up his arm, and then I saw a pistol; I laid hold of that arm, and turned him round, I fell upon the dunghill, and he upon me; the soldiers came up soon afterwards, the pistol went off, but whether in his hand or not, I am not aware; he was secured, and I conducted him into the public-house; he was searched, he had a leather belt round his waist, and a ball-cartridge in his pocket; before I had finished searching him, Bradburn was brought in; I searched him, and found a string twisted five or six times round his waist, and some ball-cartridges and six balls loose in his pocket; Wilson, and the black, Davidson, were afterwards brought in, but I did not search either of them; Davidson cursed and swore against any man who would not die in liberty's cause; that he gloried in it," and he sang part of that popular song which has obtained so much celebrity, 'Scots wha' ha' wi' Wallace bled;' "Wilson said it was all up, he did not care a damn, they might knock him on the head now. I returned to the loft, and there were some soldiers there, and three of the prisoners, Strange, Cooper, and Gilchrist, and one who has been a witness, Monument; I found two swords myself, and I saw some pistols found, and a gun or two." Then he speaks of the hand-grenades, and other things found there, which I will enumerate by and by; he is asked whether, on searching Tidd, he did not say there was nothing but a tobacco-box; and he says, "No;" that was in answer to a question put to him by the prisoner Tidd.

Then the Earl of Harrowby is examined, and his lordship says, "I am one of his majesty's privy council, and one of his majesty's ministers; cards of invitation were issued, by my direction, for a cabinet dinner, on the 23rd of February; the members of the cabinet, with their respective offices, are the lord chancellor;

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lord Westmoreland, the lord privy seal; the earl of Liverpool, first lord of the Treasury; Mr. Vansittart, the chancellor of the Exchequer; lord Castlereagh, the secretary of state for the foreign department; lord Bathurst, secretary of state for the colonial department; lord Sidmouth, the secretary of state for the home department; my lord Melville, first lord of the Admiralty; the duke of Wellington, master-general of the ordnance; Mr. Canning, president of the India board; Mr. Robinson, president of the board of trade; Mr. Bragge Bathurst, chancellor of the duchy of Lancaster; Mr. Wellesley Pole, master of the mint; the earl of Mulgrave; and myself, as president of the council, fifteen in number; in consequence of his late majesty's death, the cabinet dinners were postponed; the noblemen and gentlemen I have mentioned, are all privy councillors, and compose what is called the cabinet council. I recollect riding in the Park on the day preceding that on which the cabinet dinner was to take place; I was accosted by a person near Grosvenor-gate; he gave me a letter;" and on the letter being shewn to his lordship, he replied, "that is the letter,—it is addressed to lord Castlereagh; the person told me it contained intelligence of great importance to his lordship and myself, and desired I would have it communicated to lord Castlereagh;" by the rules of law, we cannot inquire into the contents of the letter. "I asked him whether he had put his name and address to it? he said he had not" (as I observed before, lord Harrowby did not propose to open the letter); "he expressed a wish to have some further conversation with me; I said, if I was to communicate with him, it would be necessary I should know his name and address, and, upon that, he gave me a card containing them; when I knew what were the contents of the letter, I made an appointment to meet him in the Park the next morning at eleven o'clock; the letter was produced by lord Castlereagh at the council; I met the same person the next morning in the young plantations, near the ring; I appointed that spot, because he was extremely apprehensive of being seen with me, when I met him the day before near Grosvenor-gate; in consequence of my having seen this man, the dinner did not take place; preparations were made for it, and went on until I wrote a note from lord Liverpool's house, between seven and eight o'clock, which must have reached my house about eight;" the preparations went on past the usual hour of holding the cabinet dinner, so that none of his lordship's establishment would be informed that it was not to take place until between seven and eight; "that was the first communication I made to my servants that it was not to take place."

The next witness called is James Ellis, one of the officers of the patrol at the Bow-street office. He says, "I went to Cato-street on the evening of the 23rd of February, with Ruthven; I went into the stable about half-

past eight o'clock; I saw a man, whom I believe to be Davidson, about half way between the foot of the ladder and the door of the stable; he had a carbine, or something of the kind, in his right hand, and a sword at his left side; he appeared as if he was walking sentinel; he had white cross-belts on; there was another person in the further stall of the stable, nearest the ladder, whom I did not know; when I entered the stable, I took Davidson by the collar, turned him half round, and looked in his face, and I saw he was a man of colour; I took him into custody in about five minutes afterwards; he was then dressed in exactly the same way as I had observed him before; he had a white cross-belt, a carbine, and a sword; I followed Ruthven up the ladder, into the loft; I observed a number of people falling back to the back part of the room; there appeared to be about four or five-and-twenty altogether; some of them were apparently attempting to enter a small room adjoining; as I went up, Thistlewood brandished his sword at me; he was advancing rather towards me, when I told him to desist, or I would fire, at the same time holding up a pistol with one hand, and my staff with the other; upon that, he retreated back towards the door of the little room; Smithers followed him, and Thistlewood made a push, and stabbed him in or near his right breast; he fell back, and I fired at Thistlewood, but without effect; Smithers staggered against me and fell; a general rush and confusion then took place, and I was pushed down the ladder, into the stable; I then attempted to get into the door-way, into Cato-street; I remained in the door-way for a few seconds, when two or three shots were fired by a man standing under the ladder; I then attempted to go outside the door, when some shots were fired from the window of the little room, looking into Cato-street; they were fired towards the door; I then heard a cry of stop him; I saw Davidson running, and I pursued him, and took him into custody; when I first came up, I caught him by the collar, and he made a cut at me, but I was too close to him, and Gill, another officer, came up, and assisted in disarming him; he had the carbine and the cross-belts when I took him; after I had left him in the custody of others, I returned to the stable, and assisted in securing two or three others."

They then call to you Robert Chapman, one of the Bow-street patrol; he says, "I was appointed to go to Cato-street on the 23rd of February; I went to the Horse and Groom, with Lee, the constable; I saw Davidson and Cooper come in, and another man, whom I believe to be Gilchrist; they stood observing us for some time, and we then went away; Davidson had a large drab great coat on; we then passed on to Molyneux-street, and thence towards Queen-street. I saw them again walking backwards and forwards; Cooper said he should go in, and have some beer; and, as they

passed, they looked us in the face, as if observing who we were. After this, when we were at the Queen-street end of Cato-street, I heard the report of a pistol; in consequence of that, I ran up Cato-street, and persons were then running very fast out of the stable, and there was a firing; two short men ran down the street, and, as I had just overtaken them, I heard a piece go off, and I turned round, and heard somebody say, stop him; I saw a man with his hand up; I went up to him, and he struck at me with a sword; Ellis laid hold of him by the collar, and he and I took him against the wall; he had also a carbine; the man was Davidson, but he was dressed quite differently then to what he was when I saw him before; we took him into a chandler's shop; he had a couple of pistol flints in his pocket."

On his cross-examination, he says, "I did not go into a public-house with Davidson; he remained in my custody from the time he was overtaken till I went back with him to the stable; he was not taken into any public-house; then Benjamin Gill came up, and took the carbine; he also struck Davidson on the sword-hand, and took the sword from him; I saw that done." Then he is asked, whether the carbine was not at some distance from him when he was taken? and he says, "No, I think not;" this was to contradict the testimony of Ruthven. On the testimony of the witness Chapman, and of lieutenant Fitzclarence, who says that he conducted him to Bow-street, and that he was not in a public-house while in his custody, it is supposed, that Ruthven has purposely or accidentally made a mis-statement; how that is I am at a loss to say. Ruthven states this fact, and it rather stands on the testimony of lieutenant Fitzclarence and of Chapman, that he was not in a public-house, but only in that small shop in Cato-street, but each speaks only to the time Davidson was in their respective custody.

On his re-examination he says, "I conducted him to a chandler's shop, and afterwards to the stable, with a file of soldiers. I afterwards gave him up; and whether he was taken into a public-house, or not, I cannot tell, but I do not think that he was; I do not know one way or the other."

William Lee is a Bow-street patrol; he says, "I went, on the 23rd of February, in company with Chapman, about half-past six, near the door of the Horse and Groom. I observed Davidson, Gilchrist, Cooper and Harrison; in a short time we walked away, and Thistlewood followed us; he came and stared us in the face; and I said, it was very rude to stare us in the face. Chapman answered, I suppose the gentleman thinks he knows us. Thistlewood said, it is a mistake; and he turned on his heel and went away. I and Chapman had been sent as officers less known than some others. I took a turn and came again into Cato-street, and then I saw Davidson leave the stable, and come to the corner;

at that time, Gilchrist and Cooper were under the gateway. I will not be sure of Harrison being there at that moment, but I saw him there soon afterwards; they were talking to a man dressed like a baker; at half-past eight I entered the stable with the party that accompanied Ruthven and Ellis. Ruthven and Ellis, and one or two more, went up the ladder. I heard a firing and confusion up there, and they were hustled down again; the lights appeared to be put out; there were several afterwards fell down the ladder. Ruthven desired me to stop under the gateway; there were some shots fired from the window of the loft; shortly afterwards the military came and entered the stable."

The next witness they call to you is a person of the name of Benjamin Gill, who is one of the Bow-street patrol; he says, "I formed one of Westcott's party that went to Cato-street. I cannot state exactly what time we arrived. I went into the stable; Ruthven and Ellis were there before me; there was a light in the stable. I saw a man standing at the bottom of the ladder, of a dark complexion, short, thick and stout; he had some arms but I cannot say what. Ruthven, Ellis, and Smithers went up, and I followed Nixon; he was on the ladder; he was near the top, and I was as close to him as I could possibly get. I heard the report of a pistol or something in the loft. Ellis came tumbling down; he knocked Nixon down, and Nixon fell upon me in the corner; there was a rush from the loft; I got near the door, and by a sudden rush I was pushed into Cato-street; when I got there I saw Davidson coming out of the door with a carbine; he was running out and he discharged the carbine right at me, and passed me. I then saw that he was a man of colour; he had also a large sword; I ran after him and cried out, stop him, stop him! I had very nearly reached him when he made a back cut at me with the sword, and then he advanced forwards again. He was stopped by Ellis. I struck him with my truncheon on the wrist, and made a grasp at the blade of the sword with my left hand. I found it very sharp; it cut my fingers, and I let go of it again. I think it was fastened to his hand, or he would have dropped it when I struck him. I think it was twirled round his wrist by a cord; the sword fell, and I picked it up. I took the carbine out of the other hand. Ellis and another man had got hold of him when I picked up the sword; I never lost sight of him after I saw him with the sword; he was taken over to a little shop in Queen-street. I took the carbine with me, and left the sword with Ellis. The sword and the carbine are both forth coming, and I shall know them again." The carbine is then produced to him. He identifies that and the long sword, which was produced as being that which was found upon the person of Davidson, with which he cut at him, which appears to have a leathern thong round it. The carbine, he says, was the same as was fired at him; that

he tried it, and found, when he took it to Bow-street, that it was one which had been recently discharged, for there was the moisture produced by a recent discharge.

Then John Muddock was called, and he stated, "I am a soldier in the Coldstream regiment of guards; I was one of the party that went to Cato-street; I recollect seeing a man near the stable door; I saw him the next day at Whitehall, and I found his name to be Tidd;" then he pointed him out; "he presented a pistol at lieutenant Fitzclarence; he fired it off, and I saw serjeant Legg secure him afterwards; after this I went towards the stable door, and I saw a person cut with a sword at lieutenant Fitzclarence; he went in again, and I did not see who he was, and afterwards Mr. Fitzclarence attacked them, and went in at the door, and I followed him in; after I had got into the centre of the room, the prisoner Wilson presented a pistol at my breast; it flashed in the pan but did not discharge; I made a stab at him with my bayonet; I secured him, and took him to a public-house, where I looked at him by a light; I now see the same person at the bar."

Then William Legg is called; he says, "I am a serjeant in the Coldstream-guards; I was one of the party that went under the command of lieutenant Fitzclarence on the night of the 23rd of February to Cato-street; I observed a man standing with his back against the wall, between the gateway leading out of John-street and the stable door; he had a pistol in his hand, and he levelled it at lieutenant Fitzclarence, who was about a yard and a half at the head of me; upon my observing that, I knocked the pistol aside with a pike, and seized the muzzle end of the pistol with my left hand; a scuffle upon that ensued between the man and me, and the pistol went off in the scuffle; whatever the pistol was loaded with, tore the sleeve of the jacket of the right arm; as soon as the pistol went off, he let it go easily, and I secured him, and delivered him over to the police officers; that man was Tidd; I saw him afterwards, and I have seen him since; I then went into the stable, and up into the loft; the persons who were in the loft had surrendered when I got there to part of the piquet; I assisted in securing some of the arms that were taken in the loft."

Then Lieutenant Fitzclarence is called, who says, "I am a lieutenant in the Coldstream-guards; I was applied to on the evening of the 23rd of February to send a piquet to John-street; I accompanied that piquet; when I got to John-street, my attention was attracted by the report of fire arms; I brought my piquet forwards towards Cato-street; on getting to the archway leading into Cato-street, I met a police officer, who was calling out 'soldiers, soldiers! the stable door!' I made towards it, and the moment I got to the door I met two men, one of them presented a pistol, and the other cut at me with a sword; we exchanged several cuts; he seeing the body of

the piquet coming up, ran into the stable, and I followed him; on entering the stable, I came up to one man, who said, 'do not kill me, and I will tell you all,' it turned out afterwards that that was Monument; "I gave him in charge, and then returned and took out another man, and the soldiers took him away; I then led the men up into the loft, and there I found three four or five men, and a large quantity of arms, consisting of blunderbusses, pistols, and pikes; I assisted in securing the persons in the loft, and the arms."

Upon his cross-examination, he says, "I took Davidson into custody; he was taken to Bow-street, having been first brought into the stable in Cato-street; I do not know that in proceeding from the stable he was taken into any public-house, or any other house; I will not be certain that he was not taken into the Horse and Groom; Tidd and another person were there; but I think," lieutenant Fitzclarence added, "he was not to my knowledge, in the Horse and Groom, nor in a public-house, till he was carried to Bow-street."

The next witness called is William Westcott, who says, "I am one of the Bow-street patrol; I went to Cato-street on the 23rd of February; on going up I saw Ings, one of the prisoners, at the foot of the ladder."

Then John Wright is called, who says, "I am one of the Bow-street patrol; I went up to the foot of the ladder in the stable in Cato-street; I saw a stoutish man standing there; I took from him a butcher's knife and a sword; there was wax-end twisted round the handle of the knife; that knife is in the possession of the officer; immediately afterwards I was knocked down, and received a stab in my right side, and that man made his escape from me; Ings was immediately afterwards brought back in custody."

John Champion, who is also one of the Bow-street patrol, says "I was at the stable in Cato-street on the night of the 23rd; I saw Ings at the foot of the ladder; on the officers appearing, he said, 'look out above there'; he afterwards made his escape; Brooks afterwards came up, bringing him in custody; we took him to Mary-le-bone watch-house, and searched him there; we found two haversacks slung across his shoulders under his great coat, a tin case nearly full of powder, three pistol balls, a knife case, and a belt round his breast; the knife-case was made of cloth, for a large knife; there is a knife wrapped round with wax-end, which fits it, and which is in it now."

Then William Charles Brookes is called; he says, "I am one of the Bow-street patrol; I met a man running in John-street on the night of the 23rd; he presented a pistol at me and fired it; the ball went through my clothes, bruised my shoulder, and grazed my neck; I staggered into the street, and the man ran on; he was afterwards laid hold of by Moay, a watchman; I searched him in the watch-house, and took from him two haversacks, a belt round his body, and a tin case nearly full of powder;

I asked him how he came to fire at me, a man he had never seen before; and he damned me, and said he wished he had killed me, as he wanted to do."

They then called Samuel Hercules Taunton, another of the officers, who says, "on the morning of the 24th of February, I went to Brunt's lodgings, to apprehend him; I took him in the front two-pair of stairs room; I found there two rush baskets, an iron pot and a pike-staff; I asked him about the back room, and he denied its being his apartment; I then called up the landlady, and asked her whose it was; she, in his presence, said the lodgings were let in his presence to a man, but she did not know what his name was; I asked Brunt who he was, and he said he had only seen him once at a public-house, and he did not know who he was; I then went to Tidd's lodging, in Hole-in-the-wall passage, and found some articles of ammunition;" which are now lying on the table, and enumerated in that list which I shall by and by state to you.

Daniel Bishop, another Bow-street officer, tells you that he apprehended Thistlewood on Thursday the 24th of February, between ten and eleven in the morning; he says, "I found him at the house of a Mrs. Harris, No. 8, White-street, Moor-fields; he was then in bed, with his breeches and stockings on, and his coat and waistcoat by the bed-side; in the pockets I found three leaden balls, a ball-cartridge, two flints, and a small silk sash; I took him to Bow-street, and then to the Secretary of State's."

On his cross-examination, he says, that several of the patrol went with him to apprehend Thistlewood, and that they surrounded the house before they entered it, for fear of mischief. This was all the evidence given to you yesterday.

Then, gentlemen, they have this day again called before you, Ruthven, the officer, who says, "there are now upon the table the arms and ammunition found in Cato-street; there were six more hand-grenades than there are here, which have been opened in the course of the investigations; the pike staves were ferruled at the time they were found; but some of the ferrules have dropped off, in consequence, as I suppose, of the greenness of the wood; some of the pike-heads are files sharpened, and others are bayonets; the poles are bored for the pike-heads to screw in; the hand-grenades were all fitted with fuses." Then he points out the haversacks and the belt, the knife and the knife-case, found upon Ings. He then verifies a list, which he says he made out, of the various articles; thirty-eight ball-cartridges, firelock and bayonet, one powder-flask, three pistols, one sword, six bayonet spikes and cloth belt, one blunderbuss, pistol, fourteen bayonet-spikes and three pointed files, one bayonet, one bayonet-spike and one sword scabbard, one carbine and bayonet, two swords, one bullet, ten hand-grenades, two fire-balls, one large grenade and bayonet, rope-ladder,

one sword-stick, forty ball-cartridges and one bayonet, three loose balls;" these were all found in the loft. "In the stable, in the pocket of Bradburn, six ball-cartridges, three balls and some string put round him to act as a belt; the pistol which it is alleged that Tidd fired, the pistol which it is alleged that Wilson attempted to fire, blunderbuss, sword, belt and scabbard, one pistol, one sword, twelve sticks with ferrules. In the pocket of Tidd, two ball-cartridges, and round him a leather belt; two ball-cartridges facing the stable, and ten ditto in Newnham-street; one musket cut down, and one sword from Davidson, one haversack, cross belts, one pricker, bayonet, scabbard, cartouche-box, and a belt round his body; two haversacks, one belt and tin." The remainder of the enumeration of the articles I would read to you, if there was any thing in it that tended to the benefit of the prisoners; but my learned brother suggests, that probably you have so good a recollection of the enumeration of the articles which are exhibited before you, that you may not perhaps think it necessary that I should go through it again.

Foreman of the Jury.—No, my lord, it is not at all necessary.

Mr. Baron Garrow.—Then, gentlemen, this being the enumeration of the articles, the witness says, "the stick that was found in the public house was the one left by Cooper, and afterwards asked for by Gilchrist."

John Hector Morison is then called again, and a sword being shewn to him, he says, "this is the sword that was brought for me to grind; my directions were, to grind it on both sides, and to make the point as sharp as a needle; it is particularly sharp." I asked him if that was the one he called a scimitar, and he says, "they are both of a similar shape;" then he says, "since it left me the edge has been made much keener by sharpening it with a steel or a stone, I cannot exactly say which."

Then Benjamin Gill is called again, and selects the carbine and sword taken from Davidson, from the arms which are upon the table; he had stated, that he believed there was a string attached to the sword taken from Davidson, and the one produced has such a string; "the carbine was not loaded when I took possession of it, because he had discharged it at me before I took it to Bow-street, it was quite damp."

Ruthven is again called, and he says, "the greater part of the fire-arms were loaded when we took them; we had them drawn for the purpose of being produced here; they were loaded with ball, with the exception of one gun, which had large shot."

Then Mr. Aldous, the pawnbroker, is called again, and having looked at the blunderbuss produced to him, he states, that he believes it to be the same that was taken out of pawn by Davidson, on the 23rd of February. Being asked by the the prisoner Davidson whether

he did not recollect his saying, when he pledged it, that it was not his own, he says the prisoner might make that observation, but he does not recollect it.

Taunton, the officer, is then called again, and he enumerates the articles found in the rush baskets at Brunt's; he says, "in one basket there were nine papers, with rope-yarn, tar, and other ingredients; those," he says, "are what are called fire-balls; there were also some steel filings in a paper, about half an ounce; in the other basket, which was wrapped up in the blue apron, there were four grenades, three papers of rope-yarn, tar, and other ingredients," that is, more fire-balls; "two bags of powder, one-pound weight each, they are made of flannel;" these are made up in the best manner they can be made for cartridges for cannon by a person not having a mould for the gun, and perfectly answering the purpose of a more regular cartridge; "five flannel bags empty, one paper of powder, one leather bag, sixty-three balls, one iron pot," it appears that tar, or some such substance has been heated in it, "a pike-handle;" these were all the things that were found at Brunt's; he says, "the hand-grenades found in Cato-street, and those found at Brunt's, are of the same description;" then he says, "at Tidd's, there were found in a haversack, 434 balls, 171 ball-cartridges, 69 ball-cartridges without powder in them, three pounds of powder in paper, and also in a coarse canvass cloth ten grenades, eleven bags of powder, one pound each," of the same sort with those found at Brunt's; "ten bags empty, a small bag with a tin powder flask with some powder, sixty-eight balls, four flints, twenty-seven pike-handles, of the same description as those found in Cato-street, ferruled and bored, and a box containing 965 ball-cartridges," which, he says, are made up in parcels of five each; then, upon a question being put by one of you, gentlemen, whether that box was strong enough to remove them from place to place, he says, "it was tied up strongly when I found it under the bed; it was strong enough, certainly, to be removed."

Then they call Serjeant Hanson, who says, "I am a serjeant in the royal artillery, and acquainted with such things as are now before me. The flannel bags of gunpowder, containing one pound each, I suppose were meant for cartridges for a six-pound gun, they would answer that purpose; they are made differently from what a military man of experience would make them, he would make them in a mould fitted to the gun. The ingredients of those fire-balls are nearly all alike; they are made of oakum, tar, resin and brimstone; one was without brimstone," that he supposed had been intended for the bottom of a hand-grenade; "they would be effectual in setting a building on fire, and if one of them was thrown into a hay loft with two or three loads of hay and straw, it would most assuredly burn it down, or thrown into any building and resting on wood, it would set it on fire; it would burn

for three or four minutes. In the hand-grenades I have opened, there is a small box of tin, containing about three ounces and a half of gunpowder, with a fuse brazed into it; I weighed the gunpowder in one, and they all appear to be the same, that is, more than sufficient for a nine-inch shell; first there is rope-yarn, then paper, then more rope-yarn, then the tin-box, with a number of pieces of iron tied tight round it. I found as many as twenty-five pieces of iron; if these were thrown into a room where fifteen persons were assembled, it would be discharged in about half a minute, and probably be attended with death and destruction to all the persons in the room." Then he opens one, and gives you a description of its contents; he says, "the powder is very good; the hand-grenades are not made as a military man would make them, but they are constructed so as to be very effectual and destructive; the regular hand-grenades have a shell which can only be obtained at a foundry's;" the one he opens has only four pieces of iron in it, but he says he found in another twenty-five; they vary according to the size of the pieces.

This is the whole of the evidence on the part of the prosecution. You have been addressed by the learned counsel for the prisoner upon the subject of the case which had thus been submitted to you, and you have since been addressed by the prisoners themselves. I shall not at present state to you at any length the observations which have been made by the one or by the other, but shall follow the learned lord chief baron, who presided at the only trial at which I have been present here, by desiring you, upon whom the speeches of counsel were most peculiarly calculated to make a deep and lasting impression, to give the fullest effect to all the observations that were addressed to you. I shall recommend to you to pay the utmost attention to what has been said. I have a reason for not going much at large into the observations which you have heard, which probably you will give me credit for believing is not one created by a feeling otherwise than humane towards the prisoners at the bar.

On the part of the prisoners there have been called to you as witnesses two persons to facts; the first of these is Mary Barker, who tells you, she is the daughter of the prisoner Tidd; that she knows Edwards and Adams; that Edwards, about a fortnight before the affair in Cato-street, left at her father's lodgings some hand-grenades and powder; she says, "Adams left the large grenade; Edwards asked, if he might leave them for a little while; they were not to remain there, they were to be called for again; Edwards took them away once to finish them, and brought them back again; this was about a week before the Cato-street affair; they were taken away again on the 23rd by Edwards, and brought back on the 24th, about an hour before the officer came; the person who brought them back was an entire stranger to me; there was a corded box, among

other things, left at our house, which was never, to my knowledge, uncorded during the time it remained, which was till the morning of the 24th, when the officers took it away; what it contained I do not know." You will probably not wonder, that the learned counsel for the Crown did not address any question to the witness, because it was undoubtedly true, as was stated in the reply, that if the case had remained short on the part of the prosecution, much confirmation would be derived from the testimony of this unhappy person, called in order to effect the security of her near relative; I shall make no further observation upon it; that is undoubtedly well justified.

Thomas Chambers is the next witness; he says, "I live at No. 3, Heathcock-court, in the Strand; I know Adams; I remember the day when the people were taken up in Cato-street; he called upon me twice, about a week before, in company with Edwards; Edwards asked me, in the presence of Adams, if I would go along with them; I asked them where; he said I was not such a fool as not to know there was something on foot; I replied, I did not; Adams said, we are going to kill his majesty's ministers, and we will have blood and wine for supper; Edwards replied, by God, Adams, you are right, it shall be so." He says, "on the Monday before the Cato-street discovery, they both came; they had a bag with them; they asked me to let them leave it there; I asked what it contained, and Adams said, only a few pistols and such like; a man named Tunbridge was there at the time. I refused to let them leave it, and I never saw them afterwards."

Some questions are addressed to him on cross-examination, and in answer to them, he says, "I do not know what book I was sworn upon; I never took an oath but once, before I came here the other day; this is the third time; it is a Prayer-book, I should suppose. I am a churchman; I believe in Christianity, and have always said so; I always believed in the Bible, and was brought up to the church; I never saw Paine's works. I know both the prisoners at the bar; I have known Davidson since about the time of Mr. Hunt's procession; I have only known Tidd in the trade, we are brother shoemakers; I cannot say how long I have known him, whether twelve or nine or six months. I did not particularly know him at the time of Hunt's procession." Upon being pressed as to how long he had known him, he says, "it might be at some of the meetings in Smithfield; I attended every meeting that was held openly in the air; I carried banners; I cannot say but that I might have walked in the procession with some of the prisoners who are indicted. I know Ings and Brunt and Wilson, and I know Harrison very well; I do not know Bradburn so well, but I do know him." Then he is asked whether he went to any of the Smithfield meetings in company with any of these persons, and he says, "I cannot say, they might be there; I had no weapon at the

Smithfield meeting; I carried no pistol in my pocket, nor do I know that any body else had any; I have known Thistlewood ever since Mr. Hunt's procession; he has been at my place repeatedly since, for I took home the flags, and he has been there to fetch them, and to distribute them to those who were to take them. I have seen him since, on one Sunday evening, at the Black Dog in Gray's-inn-lane. I know the White Lion in Wych-street very well; I have attended meetings there; there is no name to the meeting, except that it is a meeting of reformers; I had no number or section. I saw Thistlewood at the Smithfield meeting, when Mr. Hunt was in the waggon; I was always in the waggon; I cannot say who else was there, there were thousands I believe; I do not think I saw Davidson there." Then he is asked whether he thought they were such ferocious monsters as were going to commit assassination, and he says, "Yes, but I did not consider they would get fools enough to do it; I considered myself a fool, but not so big a fool as that; I never heard a man say a word against his majesty's ministers, except those men, Edwards and Adams; I thought the thing so preposterous and absurd, that no man would be found foolish enough to do it. I first met with Ings at a shop where pamphlets were sold; I only read Mr. Cobbett's works; I have got plenty of them."

Then they called another witness, John Bennett; he says, "I live at No. 4, Little Park-lane, New-street, Mary-le-bone; I am a bricklayer by trade; I know Hiden, he has called upon me, and asked me to accompany him to private radical meetings; he has endeavoured to persuade me to accompany him more than ten times; he did not tell me any thing was to be done there, but only requested me to go with him, and I might sit and see and hear, and say nothing unless I chose; I never did accompany him, nor ever went to any radical meetings, either private or public."

This is all the evidence called on the part of the prisoners to any facts.

They then proceed to call witnesses to the respective characters of the prisoners. For the prisoner, Davidson, the first witness they call is Isaac Cook, who says "I live in Charlotte-street Blackfriars'-road; I have known Davidson about six years; about six years ago he worked as a journeyman for me in the cabinet line, and he has since occasionally called at my house in the way of business; at the time he worked for me, he was a very honest hard-working industrious man, but I have not known sufficiently of him since to speak to his character."

For the prisoner Tidd, they call Stephen Hales, who keeps a grocer's shop at No. 17, Bell-court, Gray's-inn-lane; he says, "I have known Tidd about fifteen months, and during that time I never saw any thing in his conduct treasonable, or that looked like conspiracy; he was a very prudent and industrious man,

always at his work when he had any to do ; and when he had none he took a walk with his family, or employed his time in reading."

Then William French is called, and he says, "I am a carpenter and undertaker, living at No. 18, Union-court, Holborn ; I have known Tidd nearly three years, he was a lodger and tenant of mine ; during that time he has borne the best character ; he appeared a very industrious and honest man, and was always a punctual paymaster ; I never wished for a better tenant."

Samuel Lands says, "I live at No. 11, Charles-street Hatton-garden ; I am a boot-maker ; I have known Tidd turned of three years ; he has borne a very good character to the best of my knowledge ; he always appeared to be an honest and industrious man ; he has worked for me the whole of that time, and has deserved my good opinion."

Then on the behalf of Davidson, Robert Wood is called, and he says, "I am a tinman and brazier, living at No. 5, Elliott's-row near Lord's Cricket-ground ; I have known Davidson upwards of three years, and during that time he has appeared to be a very industrious sober man."

This is the whole of the evidence which has been laid before you in the course of these two laborious days, upon this most important and anxious trial ; and before I proceed to any other subject, I would observe upon that which has been the last topic of evidence—the character of the prisoners ; I think you may take it upon that which has been proved by the witnesses on their part, that they have received from them unexceptionable characters—then I address you in the language of all judges upon such subjects, by saying to you, that if the case imputed to the prisoners remains in any doubt, you ought to give them the full benefit and advantage of character, and that ought to turn the scale in their favour ; but if the case admits of no doubt whatever, character ought not, cannot, and it would be most preposterous that it should operate to find a man not guilty, where the evidence is clear against him.

In the course of this inquiry, it has been suggested to you, that, with all the evidence which you have heard from the testimony of witnesses, pure and impure, it is impossible for any men, who expect to have any attention paid to their observation, to hesitate in admitting fully, broadly, up to the fullest extent, that a conspiracy of many persons, characterized by those who have spoken of it as of a most diabolical, detestable nature, such as is a disgrace to any civilized country, has taken place. It has been admitted, that it is impossible to deny that the persons included in this indictment have each of them had their respective shares in that conspiracy ; but it is said, we must not confound crimes, that it was a conspiracy which in point of moral guilt, in point of diabolical turpitude, in point of cold-blooded wickedness, nothing can by possibility exceed ;

and the gentlemen have, in a manner which nobody could doubt for a single moment was a candid and fair declaration of that which they were feeling at their hearts, stated, that they could not for a single moment be the apologists of such crimes as those ; but that horrid and detestable as they were, they did not amount to the crime of high treason now charged. What is the conspiracy, then, which these gentlemen ask you to adopt in the place of that which the prosecutor says was a conspiracy to subvert the government, to depose the king, to levy war, to produce rebellion and insurrection in the country ? What is it they give you in the place of this ? why, a conspiracy to destroy by the most destructive and horrible means by which human life has ever been taken away by any assassins in any time or in any country, fifteen persons, whose names and stations have more than once been stated to you ; but feeling that it would be impossible to induce any men of your understanding to believe that was quite all, because it would be difficult to induce any man or number of men, who had no common interest, no common cause of complaint, no common sentiment of malice or revenge, by any seduction, by any temptation of reward, by any possible means to procure their accession to such a transaction—to engage in it merely for the purpose of taking off such men as those—I speak of those fifteen persons only as we find them in the evidence—this is not the place, if I had the honour of intimate acquaintance with any of those noble personages, for me to introduce that as a topic for your consideration—I speak of them only as the evidence in this case and the history of the country presents them to you ; were those the only persons who were to be destroyed according to the testimony which bears so strongly on the case (but which the gentlemen say cannot expect any credit with you, but that which the witness Adams has told you was the construction of his own invention, and not the invention of the conspirators).—Were those fifteen persons the only persons who were to become the victims of these attempts ? No ; there was one other, and that was another who, when the name is pronounced, will furnish a strong clue to ascertain whether the destruction of ministers and the plunder of houses was the only object in view, or whether it had ulterior objects of wide-spreading destruction.

You will not fail to recollect that the fire-balls, which were to light up the illuminations of the metropolis, to intimate to the friends of liberty that now was the time for them to come forward, for that their tyrants were destroyed, and that a provisional government was sitting, were to destroy, among others, the house of the bishop of London. I believe I may say of that person, that of all the learned and excellent men who have ever presided in the see of London, there never was a man, and I believe I may venture to say there never will exist a man, so utterly incapable of giving the

slightest offence to any human creature; or if I may use an expression which sometimes has been employed upon such subjects, of giving uneasiness even to the worm under his foot—the creature of benevolence—a man whose character and conduct, in public and private life, have conciliated the esteem and affection of all who know him, and of whom, I believe it may be truly said, it is impossible he should have one enemy; and yet this prelate, with his interesting infant family, and every thing that is dear to him in this world, were, according to the account you have heard of that which was to be accomplished on the 23rd of February, to be included in that which it is admitted was one of the purposes of this conspiracy, to destroy the lives of ministers and to burn the houses.

But was there no ulterior object? yes, it is admitted there was; there was an object of pillage and plunder, and it was said, they were to kick up a row, for they were too poor to wait longer. Gentlemen, forget for a moment that there was such a man as Adams in the world—forget for a moment that there was such a man as John Monument in existence, take the account you have heard from Hale, from Hiden, from lieutenant Fitzclarence, from the officers, from lord Harrowby, from his butler, from witnesses upon no one of whom the least stain is attempted to be fixed; look at the apparatus upon your table, and at the ammunition which has been carried away to a place of safety,* and ask yourselves, what more was there of conspiracy here? and had it for its only object the destruction of the lives of ministers, and some plunder? Men accommodate their means to their object; then according to ordinary experience, we may expect to find these persons going forth, if plunder is their object, as plunderers usually do, in all the possible security arising from the stillness of the night, and they will not add murder to plunder, unless murder becomes necessary, in an attempt to prevent detection; but these men are to cut off the heads of fifteen of his majesty's cabinet ministers, and to plunder; and it was said to you, "oh, the carrying the haversacks, with the accompaniment of the butcher's knife, was not to cut off and bring away the hand and the heads of his majesty's ministers; that was a wicked diabolical invention of Adams." If you ask, say the learned gentlemen, what they were all for, they were for the carrying away the plunder. You have seen these things, gentlemen, what was the plunder which might have been expected at the house of one of his majesty's ministers? probably an extremely valuable service of plate to the amount of four or five hundred pounds or more, much of it in massive articles. We shall find persons going out to plunder with the means of carrying away the plunder when they have got it, but shall

we find them encumbered with things which will not enable them to carry it away; shall we find the party with only two haversacks over the shoulder of one of the men? and yet that is the only object to be accomplished. What is to become of them afterwards? The project is to relieve their dire necessities; they are in want, they can wait no longer; why; there is no article they could have found any where less convertible to the immediate purpose of life, than a service of plate off a nobleman's sideboard, unless the crucible was already prepared to melt it down, and some person ready to sell the ingots produced; but besides that, they would want the accommodation for carrying away plunder. What was required for the destruction of the cabinet ministers of the king? Were the articles on the table necessary? Were the hand-grenades which remained at Brunt's necessary? Were the large grenade and the other articles found at Tidd's, the next morning, necessary? Were cartridges for six-pounder cannon, were ball-cartridges fit to be served out to very few short of a thousand men, in parcels of five, necessary for the purpose of accomplishing the great stroke to be performed, the West-end job, which was to consist in destroying his majesty's fifteen cabinet ministers in the dining-room of the earl of Harrowby, the president of his majesty's council! If those were not wanted for this purpose, for what purpose were they wanted? your verdict will give the answer, whether they were wanted for the purpose of creating a nucleus for rebellion and insurrection, and, trying whether that which one of these men said was true, that the people were every where anxious for a change, and that they wanted only a leader to be found in numbers equal to the carrying all this into execution.

But you are told (and it is the argument used on many occasions of this sort) that for the imputed ulterior objects, the means are utterly inadequate to the end, and you are asked with a triumphant sarcasm, what were they to destroy his majesty's ministers, to kill all the opposing million of inhabitants of this metropolis, to trench the Tower all round, to burn down all the barracks, and to take possession of the Mansion-house, and then send out their mandates to all the outposts, informing them their towns were to be battered about their ears, with six bags of a pound each in flannel, and some hand-grenades, and five-and-twenty men or forty men, and is the country to be revolutionized by these means, and are we to be all undone by them? Nothing can be more ridiculous, nothing more preposterous. But is that the proposition, is that the expectation of the conspirators? is it that which one of them declares to be his expectation? He declares, if you believe the evidence, that he has been disappointed by men who promised to stand by him, but that he has now men who will stand by him, and that when the tyrants shall have

* The gunpowder and other combustible matter had been removed out of court, at the conclusion of the evidence for the prosecution.

been destroyed, and the provisional government shall be sitting, the men who have been looking anxiously for a change, will see that they have now a service presented, in which their exertions may be successful. What is necessary to this? crowd to the standard of rebellion—erected by whom? erected by a band of ruffians, with their hands reeking with the blood of some of the most illustrious men who have ever adorned any country; with cannon stolen from the repositories in which they were supposed to be secure, with the blood streaming from the heads of two of his majesty's secretaries of state, in order to affect those who are likely to be affected by such scenes as these, and to assure the friends of liberty that those heads would not have been there by the instrumentality of mean and insignificant traitors, but that there were men of more consequence behind, who would come forward whenever an opportunity presented itself.

But it is said this is so preposterous, so absurd, so ridiculous (that is, I believe, the expression of one of the learned gentlemen) that a man who could be walking about the street without a keeper, without a strait waistcoat to put upon him, could not for a single moment have entertained so ridiculous an idea. What is this preposterous proposition? why, that by this strength, and a probable accession to it, they should overturn the government? no, but that they should make an attempt with a probable expectation that they shall receive a support carrying them to the ultimate attainment of their object. Is this the first occasion on which, by small means in the beginning, enthusiastic men have made similar attempts? I am sure I must address myself to several gentlemen who, by their appearance, must be of an age to have seen, what I never can forget as long as memory holds its seat, this metropolis without a leader, or any one pretending to be a leader under the dominion, for many successive days, of a mob, originally composed of wretched miserable boys and women, and of drunken men; with, I believe, at one time no fewer than seven, of what in the language of to-day, are called illuminations, houses on fire, in different parts of the metropolis and its neighbourhood; all men aghast, and not knowing where it would end, until the firmness and vigour of our lately departed, revered, and excellent sovereign, to whose virtues and to whose courage his subjects in time past have owed, and certainly futurity will owe obligations which never can be overstated—obligations which to him never can be re-paid, even by the gratitude of those who might not have lived but for his exertions. No one can answer for the consequences of such beginnings; we have evidence that one of the conspirators said, "We have gone so far we cannot recede, if we do, it will be another Despard's job." What was Despard's job? a heated enthusiast; a man who had been in the army; with preparations like these? no, with preparations which this exceeds beyond all the bounds of

calculation; fancying himself strong enough to summon the Tower of London, and believing there were but a few hours before he should become at the head of a provisional government, the king having been deposed; if we talk, indeed, of furious and Quixotic expeditions, what can be more absurd than the practical proposition of the man to whom I have alluded, who, it will be recollected, proposed that his majesty, the late king, should be taken off by firing the long gun, which then stood and now stands in the park, at his majesty's carriage, as he should be going, as his present majesty has been to-day, to meet his parliament; and when one not so deeply dipped in blood, or with the intention of dipping himself so deeply, remarked that a great many innocent persons would be killed; he replied, "Oh, that cannot be helped—to accomplish a great good, private suffering is not to be regarded." This is a part of the history of our country, and yet we are to be told it is impossible this can be true, because no man or set of men could believe they could put it even into motion without more adequate means.

If we are to talk on the subject of adequate means, let us turn our eyes to a period not removed to the distance from that of which I had the honour to speak to you, about a quarter of a century, and ask if any man had predicted that the king or the queen of France, or the best blood of that kingdom (mixed with a great deal, undoubtedly, as will always be the case, of the worst blood of it) could have been destroyed by such beginnings as ushered in the French revolution, the destruction of monarchy and all the miseries the world has endured, he would not, to use the language which has been used on the present occasion, have been considered as a man in a waking dream, who ought to be put into safe custody to prevent his doing mischief to others, and to be consigned during his life to a cool cell? and yet these scenes have been exhibited; do not let me be misunderstood; do not let it be supposed that I mean to say that I apprehend the providence of God will ever permit the people of this country so to be demoralized—so to forget all they have derived from their ancestors—all the blessings they now enjoy—all they can hope to enjoy, while they continue loyal, virtuous, and attached to our constitution—that a revolution in the country can be a thing of easy accomplishment, or that it is to be accomplished at all; the charge here is not the having accomplished a revolution; the charge is, in the language of the law, having conspired or imagined to depose his majesty, having formed the intention by these overt acts to force his majesty to change his measures; and these, I tell you, if they are made out to your satisfaction, are acts of high treason, which are imputed by the present indictment.

But let us consider it in another point of view, which has been pressed upon us over and over and over again; the learned counsel,

anxious to do the best for the unfortunate men who have solicited their kind aid, tell you, they cannot help thinking they have deceived themselves, and that this story is so absurd that it cannot possibly be believed; what are you to contrast it with? you are to contrast it with a conspiracy to destroy fifteen men, unknown to them, perhaps, even by name; unknown to them by any past wrongs—by any present suffering—by any expectation of future injuries, by a band got together in this way. If I were to be asked, which of the two things, after the experience the world has afforded us, is the more absurd and ridiculous, the least likely to be adopted, and the least likely to be attempted to be carried into execution, an attempt of rebellion, in hopes of bringing about a revolution, or a project of conspiracy, by a certain number of men, in the metropolis of the British empire, going furnished with a hand-grenade—with a butcher's knife, and all this apparatus, to effect the destruction of fifteen such men,—if I were bound upon my oath to say which of the two things I think most probable, until I had the grievous misfortune to hear the testimony of yesterday and to day, I should have said the latter proposition; that any number of British men could be found, in cold blood, to perpetrate such an act, was so much more improbable than any other act I have ever heard stated, that I should have thought even successful rebellion more probable than such an attempt. It is for you to say whether you are satisfied that conspiracy has been entered into, and whether the two prisoners were members of that conspiracy. If you are of opinion it had no other object than to murder these fifteen ministers, and to plunder and burn certain houses, you will acquit the prisoners of high treason; but if you think that it was their intention thus to lay the inception of the work of rebellion, insurrection and the destruction of the constitution, with all its necessary consequences—if you are of opinion, that the destruction of his majesty's ministers was only one step towards the accomplishment of that object, and that the other objects were those for which these mighty preparations were made;—in that case, you will feel it your duty to find the prisoners at the bar guilty of the charge of high treason, for which they at present stand indicted.

Foreman of the Jury.—My lord, we should wish to be accommodated with a copy of the indictment.

Mr. Baron Garrow.—There is one, gentlemen, and annexed to it an abstract of the indictment, that will be perhaps a convenience to you; the counsel for the prisoners have seen it.

Mr. Curwood.—Oh, certainly; there can be no objection to it, it is in the most convenient form, and is a correct abstract.

[The Jury retired at twenty-five minutes past seven o'clock, and returned into

Court at five minutes past eight, with their verdict, finding both the prisoners Guilty on the third count, excepting the eighth and tenth overt acts.]

Mr. Curwood.—I believe your lordship was not in court when the prisoner Wilson was arraigned; he pleaded a misnomer. My humble motion is, that Wilson may now be permitted to withdraw that plea, that he may plead *de novo* to the indictment.

Mr. Baron Garrow.—Do you wish that to be done to-night?

Mr. Curwood.—If your lordship pleases.

Mr. Attorney General.—I do not object, my lord.

Mr. Baron Garrow.—Let the prisoner Wilson be put to the bar.

[The prisoner Wilson was placed at the bar, and on being addressed as James William Wilson, he answered to that name.]

Mr. Curwood.—It is not necessary to read over the indictment again to the prisoner, as he has heard it.

Wilson.—I withdraw my former plea, and wish to plead guilty to the former indictment.

Mr. Baron Garrow.—Prisoner, are you apprised of the consequences of that which you know propose? You propose to withdraw your plea, which would entitle you to be tried by a jury of your country, and to plead guilty; the consequence of that would be, that the Court would be under the necessity of passing upon you the sentence of death: it will be enough for me to know, if that is so, that you do this advisedly, have full knowledge of the fact, and its consequences; and do you, notwithstanding, now desire so to conduct yourself? The question will be again put to you by the officer of the Court, and you will make such plea as you think proper.

Clerk of Arraignment.—James William Wilson; you stand indicted for high treason: you have pleaded not Guilty, and also a misnomer; are you desirous to withdraw that plea?

Wilson.—Yes.

Clerk of Arraignment.—James William Wilson; you stand indicted for high treason; are you guilty, or not guilty?

Wilson.—Guilty.

Mr. Baron Garrow.—The prisoner having pleaded, after full information of his situation, his plea must be recorded.

Mr. Walford.—My lord, on the part of the remaining five prisoners, Harrison, Bradburn, Strange, Cooper, and Gilchrist, I am instructed to make a similar application.

Mr. Baron Garrow.—We had better have them at the bar, perhaps, before you address the Court.

[*They were placed at the bar.*]

Mr. *Baron Garrow*.—Gentlemen of the jury; I am arrived now at a state of things, in which I can give you your option, either to go now, or wait a few minutes; but after the very great fatigue you have undergone, I would not keep you one moment unnecessarily. For the business of to-morrow we had provided other jury, so that we should not have given you the trouble of coming here again till Monday; the course which is now being pursued, will prevent the necessity of your further attendance. One prisoner has applied for permission to plead guilty, and has so pleaded; and it is now prayed that the same course may be taken with respect to the remaining prisoners, and the Attorney-general does not object to that; so that your further attendance will not be required. I lament as much as any man can do, the great expense of time, and the great inconvenience to which you have been subjected; your country is much indebted to you for your services, and you are now dismissed from further attendance.

Mr. *Walford*.—My lord; these five unhappy men have confided their defence to my learned friend, Mr. Broderick and myself. We have looked into their cases with the most serious attention; we have considered every thing which could be urged in their behalf with inconceivable anxiety, and having done so, we feel that we shall best consult their interests by pursuing the course which has just been pursued in respect of the prisoner Wilson. The fate of their fellow-prisoners acts as a warning to them; they are anxious to throw themselves upon the mercy of our sovereign, who, like his revered father, considers the prerogative of mercy as the best jewel of his Crown. They hope that their contrition will plead for them, and will not plead in vain.

Mr. *Broderick*.—My lord; being assigned as counsel for the prisoners at the bar, I am most anxious that every thing I could do, as far as my humble judgment enabled me, should advance their interests. I only beg to add, that I fully concur in the application of my learned friend; and I am sure, no man will venture to surmise, that in adopting that course, we do any thing but prefer their interests. They desire to plead guilty, as the only reparation which they can make to the outraged laws of their country—they certainly do not demand mercy—they own they deserve none; but if they should in the depth of mercy find it, we will still hope (though we do not ask a promise that it shall be granted), that, if consistently with justice, mercy can be granted, it will be extended from the Crown, where it is the brightest attribute, even though the person of the sovereign may have been menaced by their crimes.

Mr. *Baron Garrow*.—Prisoners at the bar; You now stand charged with the high offence of high treason. In the commencement of the proceedings, counsel were assigned to you, to

assist you in your defence. The two learned gentlemen, who were so assigned, have stated to the Court, that they have paid, as I am quite sure they have, their best attention (and no better could have been paid) to your cases and that you desire now to withdraw the plea of not guilty, and to plead guilty. I cannot take that from the representation of those learned gentlemen, though I entertain no doubt about it, without being perfectly persuaded from yourselves, personally, that you adopt that as your own act, and the result of your own judgment, with a certainty that the sentence of death must be passed, and with all the consequences that may follow from it: There is no engagement entered into with you; these gentlemen say they do not ask it, nor expect it, but that they for you, and you for yourselves, desire to submit yourselves entirely to the Crown by your plea of guilty. If, having considered all these circumstances, you desire this plea should be recorded, it will be done accordingly.

[*The prisoners severally desired to withdraw their former plea; and on its being withdrawn, pleaded guilty.*]

Mr. *Baron Garrow*.—The prisoners may retire from the bar.

Strange.—I beg to throw myself on the mercy of my sovereign.

[*The prisoners were removed from the bar.*]

Mr. *Baron Garrow*.—As, happily, we have now finished all the trials for high treason, notice must be given to as many of those gentlemen who are within such distance that it may be expected to reach them at so late an hour, that their attendance will not be required; and to such as may happen to be present, I take this opportunity of returning thanks for their very assiduous and painful attention.

[*Adjourned to to-morrow morning nine o'clock.*]

SESSIONS HOUSE, OLD BAILEY,

FRIDAY, 28TH APRIL, 1820.

Present

The Right Hon. *Lord Chief Justice Abbott*,
The Right Hon. *Lord Chief Justice Dallas*,
The Right Hon. *Lord Chief Baron Richards*,
The Hon. Mr. *Justice Best*,
The Hon. Mr. *Justice Richardson*,
The *Common Serjeant*.

[*The prisoners were placed at the bar; and on being severally asked by the clerk of the Arraignment, "What have you to say for yourselves, why the Court should not pass upon you sentence to die, according to law?"—made the following answers:*]

Thistlewood.—My lords: I consider that I

* Several unwarrantable and highly indecent reflections upon the conduct and characters of the judges of the court, although the prisoner was permitted to give utterance to them

have not had a fair and impartial trial, and that the execution of the law cannot be carried into effect without evident injustice. After my counsel, Mr. Adolphus, had finished his address, I was asked by the Court, if I had anything further to offer? and I then tendered evidence, which had just been obtained, to impeach the credit of the two witnesses for the Crown, Dwyer and Hiden, but I was told it was too late, and these men were represented to the jury as being witnesses of credit. In common justice, my lord, surely it never can be too late for a jury, when investigating a charge which involves the life of a fellow-creature, to receive information in the regular form, previous to their delivering their verdict; but in my case, it was offered before the Solicitor-general rose to reply, and he would have had the opportunity of observing on the testimony; and, my lord, if I had been allowed to call the evidence I tendered, Dwyer would have been proved a villain of the blackest atrocity; for even since my trial, a partner in his guilt, named Arnold, has been capitally convicted at this very bar, for obtaining money under circumstances of an infamous nature.

On the ground, therefore, of a mis-trial, in not being allowed to call witnesses to fact, I humbly submit, that judgment ought not to be passed on me.

Ere the Solicitor-general replied to the address of my counsel, I applied to the Court to hear my witnesses, the Court inhumanly refused; and I am, in consequence, to be consigned to the scaffold. Numerous have been the instances, in which this rule of Court has been infringed.

I had witnesses in court to prove that Dwyer was a villain beyond all example of atrocity. I had witnesses in court to prove that Adams was a notorious swindler, and that Hiden was no better; these were the three witnesses, indeed almost the only ones, against me; but the form and rules of Court must not be infringed upon to save an unfortunate individual from the scaffold. I called those witnesses at the close of Mr. Adolphus's address to the jury, and before the Solicitor-general commenced his reply, but the Court decided that they could not be heard. Some good men have thought, and I have thought so too, that before the jury retired all evidence was in time, for either the prosecutor or the accused, and more particularly for the latter, nay, even before the verdict was given, that evidence could not be considered too late. Alas! such people drew their conclusion from principles of justice only; they never canvassed the rules of Court, which have finally sealed my unhappy doom.

Many people, who are acquainted with the barefaced manner in which I was plundered

in the course of this his address, I have expunged.

by my lord Sidmouth, will perhaps imagine that personal motives instigated me to the deed; but I disclaim them. My every principle was for the prosperity of my country; my every feeling, the height of my ambition, was the welfare of my starving countrymen. I keenly felt for their miseries; but when their miseries were laughed at; and when, because they dared to express those miseries, they were cut down by hundreds, inhumanly massacred and trampled upon; when infant babes were sabred in their mothers' arms; nay, when the breast from whence they drew the tide of life was severed from the body which supplied that tide, my feelings became too intense, too excessive for endurance, and I resolved on vengeance; I resolved that the lives of the instigators should be the requiem to the souls of the murdered innocents.

In this mood I met with George Edwards; and if any doubt should remain upon the minds of the public, whether the deed I meditated was virtuous or contrary, the tale I will now relate will convince them, that in attempting to exercise a power which the law had ceased to have, I was only wreaking national vengeance on a set of wretches unworthy the name or character of men. This Edwards, poor and penniless, lived near Pickett-street, in the Strand, sometime ago, without a bed to lie upon, or a chair to sit in. Straw was his resting place; his only covering a blanket. Owing to his bad character and his swindling conduct, he was driven from thence by his landlord. It is not my intention to trace him through his immorality; suffice it to say, that he was in every sense of the word a villain of the deepest atrocity; his landlord refused to give him a character; some short time after this he called upon his landlord again, but, mark the change in his appearance, dressed like a lord, in all the folly of the reigning fashion. He now described himself as the right heir to a German baron, who had been some time dead; that lords Castlereagh and Sidmouth had acknowledged his claims to the title and property; had interfered in his behalf with the German government, and supplied him with money to support his rank in society. From this period I date his career as a government spy.

He got himself an introduction to the Spenceans, by what means I am not aware of, and thus he became acquainted with the reformers in general. When I met with Edwards after the massacre at Manchester, he described himself as very poor; and, after several interviews, he proposed a plan for blowing up the House of Commons. This was not my view; I wished to punish the guilty only, and, therefore, I declined it. He next proposed that we should attack the ministers at the fête given by the Spanish ambassador. This I resolutely opposed, because the innocent would perish with the guilty—besides, there were ladies invited to the entertainment, and I, who am shortly to ascend to the scaffold, shuddered with hor-

ror at the idea of that ; a sample of which had previously been given by the agents of government at Manchester, and which the ministers of his majesty applauded. Edwards was ever at invention, and, at length, he proposed attacking them at a cabinet dinner. I asked, where were the means to carry his project into effect? He replied, if I would accede, we should not want for means. He was as good as his word; from him, notwithstanding his apparent penury, proceeded the money provided for purchasing the stores which your lordships have seen produced in court upon my trial. He, who was never possessed of money to pay for a pint of beer, had always plenty to purchase arms or ammunition. Amongst the conspirators he was ever the most active; ever inducing people to join him, up to the last hour ere the undertaking was discovered.

I had witnesses in court who could prove they went to Cato-street by appointment with Edwards, with no other knowledge or motive than that of passing an evening amongst his friends; I could also have proved, that subsequent to the fatal transaction, when we met in Holborn, he endeavoured to induce two or three of my companions to set fire to houses and buildings in various parts of the metropolis; I could prove that, subsequent to that, again he endeavoured to induce men to throw hand-grenades into the carriages of ministers as they passed through the streets; and yet this man, the contriver, the instigator, the intrapper, is screened from justice and from exposure, by those very men who seek vengeance against the victims of his and their villainy. To the attorney and solicitor general I cannot impute the clearest motives; their object seems to me to have been rather to obtain a verdict against me, than to obtain a full and fair exposition of the whole affair since its commencement. If their object was justice alone, why not bring forward Edwards as a witness, if not as an accomplice; but no, they knew that by keeping Edwards in the background, my proofs, aye, my incontrovertible proofs, of his being a hired spy, the suggester and promoter, must, according to the rules of Court, also be excluded.

Edwards and his accomplices arranged matters in such a manner as that his services might be dispensed with on the trial, and thus were the jury cut off from every chance of ascertaining the real truth. Adams, Hiden, and Dwyer were the agents of Edwards, and, truly, he made a most admirable choice, for their invention seems to be inexhaustible. With respect to the immorality of our project, I will just observe, that the assassination of a tyrant has always been deemed a meritorious action; Brutus and Cassius were lauded to the very skies for slaying Cæsar; indeed, when any man, or any set of men, place themselves above the laws of their country, there is no other means of bringing them to justice than through the arm of a private individual. If

the laws are not strong enough to prevent them from murdering the community, it becomes the duty of every member of that community to rid his country of its oppressors.

Lord Chief Justice Abbott.—Prisoner, while you have been expressing yourself in the way you have towards us who are here present, we have not thought it right to interpose, but we cannot allow a person, standing even in your situation, to justify assassination and murder.

Thistlewood.—I have just done, my lord. High Treason was committed against the people at Manchester, but justice was closed against the mutilated, the maimed, and the friends of those who were upon that occasion indiscriminately massacred. The prince, by the advice of his ministers, thanked the murderers, still reeking in the gore of their hapless victims. If one spark of honour, if one spark of independence, still glimmered in the breast of Englishmen, they would have rose to a man; insurrection then became a public duty, and the blood of the victims should have been the watch-word to vengeance on their murderers.—

Lord Chief Justice Abbott.—We cannot allow this.

Thistlewood.—I have but a few lines more. The banner of independence should have floated in the gale that brought their wrongs and their sufferings to the metropolis; such, however, was not the case; Albion is still in the chains of slavery; I quit it without regret; I shall soon be consigned to the grave, my body will be immured beneath the soil whereon I first drew breath. My only sorrow is, that the soil should be a theatre for slaves, for cowards, for despots. My motives, I doubt not, will hereafter be justly appreciated; I will therefore now conclude by stating, that I shall consider myself as murdered, if I am to be executed on the verdict obtained against me, by the refusal of the Court to hear my evidence. I could have proved Dwyer to be a villain of the blackest dye, for since my trial, an accomplice of his, named Arnold, has been capitally convicted at this very bar, for obtaining money under circumstances of an infamous nature.

I seek not pity; I demand but justice; I have not had a fair trial, and upon that ground I protest that judgment ought not to be passed against me.

Davidson.—My Lord;—The first thing I have to say for myself is this; I do entirely protest against the proceedings on the trial. I always understood that, in a court of justice, where a man stands indicted for his life, the balances of justice ought to be fairly held by those who ought to have exhibited justice to him who stands there, helpless as it were, for I am not allowed to contradict the evidence till such time as it has made an impression upon the hearts of those gentlemen in the box.

When I had that opportunity I made it as plain as I could; but, alas! what effect had it all; the attorney-general rose as a sweeping flood, and overturned what I had fairly said; and I appeal to any man that was in court, whether, in the summing up of the evidence, Judge Garrow did justice to me, as a prisoner at the bar. Was he not inveterate against me? did he not influence the minds of the jurymen, and almost insist upon their pronouncing me guilty? did any person identify me to be the identical person except those officers who, we all know, and every Englishman must know, have been always instrumental to the death of innocent men. I have never been in a public life. I appeal to all those gentlemen, whether I have ever engaged in any plot, if I had fifty lives, and they were wanting for the public good, they should have them; and if it were my blood, they should take every drop, and I would stand here while they took it, and fall a victim to my enemies; but in what manner is it I could ever be guilty of high treason? it was never pretended I had ever said any thing, directly or indirectly; I must have been a silent spectator from the nature of my colour. I should have been immediately remarked if I had taken an active part. I have got a deal to say for myself where I feel it to be proper; but there is not one single witness has ever said that I said any thing, consequently I could not be a person that was in the conspiracy; they have said, only that there was a man of colour, and, unfortunately, I was caught near the spot, and was fixed on by them; but still justice ought to be done to every man, and especially where it is done in the revered name of British justice.

In regard to the blunderbuss, Mr. Aldous must be confused; for I told him, that I pawned it for a friend, and when I fetched the blunderbuss from the place where I had pawned it, I did it at the desire of Edwards. Mr. Edwards received it from me. Mr. Edwards gave me the money to get it out of pawn; and I stand here and say, before God, that I did not know what it was fetched for.

I was found with a sword in my hand; I have told the Court how I came by that sword; but I protest on my soul, as I shall stand before God, that I never made a blow at any man, or discharged a blunderbuss at any man. As to Munday, a man who has come here merely for the hire for his day's work, as a witness against me, who has come as to a common day's work, to take a man's life away, I declare I never had a pistol in my possession in my life. This man says he saw me with a long sword; on one occasion he has stated that, and on another omitted it; but suppose I was found with a sword in my hand, who can prove that I meant to overturn the government? who can prove that I meant to assassinate the ministers? who can prove that I meant to lay my hand on my sovereign? Is my character so black as for it to be said in this country, or where I have travelled, that I

am an assassin or a murderer? I appeal to every man who knows me, whether I am a man of that character or stamp directly or indirectly, to do such a thing; but even if the sword was in my hand; and my intention was even to join with those people, I do not see that it was a conspiracy against the lives of any ministers or of the king himself; because in the passages of Magna Charta, when king John granted that charter, the passage runs in this form; that the people should choose twenty-five barons from among them, with an intent that those twenty-five barons shall see that the acts of this charter are not violated by his majesty or any of his ministers; and if any of them be violated by the king or his ministers, four of those barons shall go and insist on redress; and if redress is not given within twenty-five days, they are to return and compel them to give it—how? with empty hands? no; with arms to stand and claim their rights as Englishmen; and if every Englishman felt as I do, they would always do that. But it goes on further to say; and if redress be not forthwith given, they shall seize on his revenues and his castles, and place such persons in his castles as will see and observe the duties imposed upon him by the barons. And our history goes on further to say, that when another of their majesties the kings of England tried to infringe upon those rights, the people armed, and told him that if he did not give them the privileges of Englishmen, they would compel him by the point of the sword; that is language never used by me, or those with whom I acted, and yet those persons were not considered as beneath the character of Englishmen, and to be condemned to death. Would you not rather govern a country of spirited men, than cowards? Another sovereign was threatened, and his minister taken before his face, and executed; a few years after that he collected himself, and after packing a parliament, he brought this matter before the parliament, and charged those persons as conspirators; but there was that spirit in the heart of every Englishman, though he had packed them, what did they answer him? That the people who had so done, had deserved more his thanks than his enmity, for they had destroyed that which would have destroyed thousands of men, and which had destroyed his honour, his wealth, and his revenues, and formed a ground for war between the king and his subjects, and without the life of that man, peace could never have been made between him and his subjects; and having done that, did he catch up a number of poor harmless individuals, as we are? no; but a few years after that, he again took up these measures, and what was the consequence? he was dethroned; but I solemnly declare, that I knew of no intention to dethrone the king; I was entrapped; I am ashamed to say I was entrapped; a man of my spirit to be entrapped by such a scoundrel as Mr. Goldsworthy, to get me to the Horse and Groom just at that time:

I did not know at that time that he knew Edwards; and when, as I was going away, there was a cry of "stop thief" behind me, I felt that an indignity, and turned round to resent it; but this man swears falsely, for I never struck at any of them; they have come forward to swear my life away on this charge, and I now tender my life to your service; I can die but once in this world, and the only regret left is, that I have a large family of small children, and when I think of that, it unmans me, and I shall say no more.

Jags.—I have got but very little to say for myself, for you will not allow me to speak; if Mr. Edwards had not got acquainted with me, when I kept the coffee-house, I never should have been here; he came to my house, and got acquainted with me; unfortunately I could not get on with my business, and get a living for my family; and early in January, I met him in Smithfield, and he went and gave me victuals and drink; I got acquainted with him through that, and he bought me things, and gave me a great many things; and in my anxiety of mind, for I could not keep my family, it was, that I was induced for the sake of these things, to keep company with him, and it is through him I shall lose my life; I do not mind dying, if you will let that man come forward, and die with me; he was the instigator and the author of all the atrocity I was going to commit. The murdering his majesty's ministers, I admit, was a disgrace to human nature; but those ministers meet and conspire together, and pass laws to starve me and my family and my fellow-countrymen; if I was going to assassinate those ministers, it is not so bad as starvation, in my opinion, my lord.

There was a meeting, if you recollect, called at Manchester, under the protection of the great charter of England, which our forefathers bled and fought for, and made king John sign in the open air; those men were met under the protection of that law, to oblige parliament to give them their rights. My lord, previous to the meeting, the Manchester yeomanry cavalry carried their swords to the cutlers to be ground; for my own part, I see no harm in grinding swords, but they cut down unarmed men, women, and children; that was a disgrace to the name and character of Englishmen; I carried a sword to be ground, but I never used it; I hope my children will live to see the day that there will be justice administered in the country; that they all will be freemen, and live like men; I had rather die like a man, than live like a slave; I am sorry I have not got abilities to address you, but I have not, and therefore I must withdraw.

Brant.—Why, my lord and gentlemen, I am precluded from saying much, for I intended to have committed my short defence to paper; but as I had not an opportunity of pen, ink and paper, I am precluded from so doing. As such, I shall state shortly what I think concerns my life. I shall commence with the

remarks which I made to the jury when I was being tried, and which has been so ably knocked down by the learned Solicitor-general, who appears by his sophisticated eloquence to be capable to make even crime a virtue. I then entered into a detail of the character of Mr. Adams, and the sort of enmity he had to me, which should induce him to deprive my wife, of a husband, and my children of a father. I next adverted to the character of Edwards, who was the man who once before laid a trap for me, which I avoided, and afterwards entrapped me: he laid a trap for me when there was a dinner at the earl of Westmoreland's; he said, he had been watching the earl of Westmoreland when there was a dinner there, and he mustered his men, but there were not enough, and so he would not betray them. There is no doubt Mr. Hiden was in this plot, for he told me of it at the Scotch Arms, in Round-court; and of all the nefarious practices that ever were carried on in the known world by any government, or any set of men, there never was any thing so villainous in this world as that of the gentlemen sitting round there to carry on the nefarious practices on the part of the evidences, as well as in keeping Edwards in the back-ground; this I protest, and I protest, and will again, that there is no man on the terrestrial globe who ought to care aught for his life if it is to be sacrificed in liberty's cause. When I look at that sword of justice, and those tablets by the side of it, it makes every drop of blood boil within me, when I hear a man get up and defend the villain who has come up to swear my life away. It can be proved by my wife, and people in my house, that I never went after him. Can he say, when he sent letters to me to call upon him, did I ever call upon him? No; the villain wanted me to go to him in prison, and then he would have got me in I suppose; but the moment he gets out, he comes to me again, and he is furnished with arms, with a brass-barrelled pistol, and a blunderbuss, which he has not stated here; he said a sword was not sufficient for him; the sword belonged to Edwards, and he had it for the situation he volunteered to in lord Harrowby's house. This is the villain who has entrapped me, though the Solicitor-general stated so ably that I was a liar and a villain, and that I could not prove these facts; when men of character at the West-end of the town, whom he has been in the habit of calling upon, know them well. He got me into it, because he knew I was a man of principle; he knew I was a man of principle, and that if I said, I will put a tyrant out of the world, I would do it, or perish. If this is a crime, let me die here instantly; I have no objection, not the least. But that, even after I went before the privy council, had not I an offer to become a villain then? might not I have turned against these people, and others that are not taken? might not I, if I was a villain in nature—but never shall it be said that ever I betrayed a man.

Now, gentlemen, respecting what the solicitor-general stated, that I was a liar in saying what I did, for that it was not the fact. I say this man can be brought forward now; that I can bring forward a man of the name of Dowling, a man of unimpeached character, who went in company with him and Mr. Thistlewood and Edwards, to the Cross Keys, at the end of Drury-lane; he fetched out this man, with not a halfpenny in his pocket, and took him into the public-house, and treated him; but I would wish to observe, while Mr. Thistlewood and this man and Edwards were together, while I was gone out, he made an observation which this man had art enough to see through; he said, "If I had a hundred such men as you, I could do more good for this country than the duke of Wellington with an hundred thousand men;" he laughed at it, and asked him what he meant; he said, "If I see you again, I will make a man of you." He treated him with beef steaks and rum; and he called upon me two days afterwards to go to this man again; and he said to me, "that man will do very well;" but this man saw through him, and he said, "I know he is a villain; I do not like the appearance of him at all; and as to his saying he has got secret political friends that will advance him money, and so on; how do you know but he is receiving money from the government;" however he preyed on my credulity; I did not see him in that light then, which I have since I have been in prison, though I never attempted to vilify any man; the solicitor-general says I spoke falsely, and that I cannot prove this respecting Adams. It can be proved that he is as big a rogue as ever lived.

Gentlemen, I should like to know what Christianity will receive from being so ably defended by the solicitor-general. This man acknowledged himself he had been an infidel till the 24th of February, till he had a noose about his neck, and that God Almighty then strengthened his mind to take my life away. Is this christian repentance? if it is, never let me embrace it; I have a different idea of Christianity. I believe, were I guilty of that, my Creator never would suffer me to approach him; and I consider that I am right. This villain, as I say, has watched every opportunity; he has come to me in the greatest distress, and begged a shilling of me, as I was a little better off than himself, though not much, to get his family a supper, and now he comes forward to this bar and swears my life away. Is this, gentlemen, the evidence to be taken in a court of justice, to take the lives of a number of men: more I did expect; but as I understand a number of my fellow prisoners are suffered to plead guilty, and so I suppose there will not be quite so many sacrificed.

Now, gentlemen, I will go to my apprentice. The learned solicitor-general likewise observed, what a pure evidence he was, and an evidence that no one could doubt. I can prove him, and

I have before, to be a villain in nature, though young; and had it not been for his having a table of mine regularly to go to, when I did not sometimes earn a pound a-week to support my family, that villain would have been transported before now, for he went about thieving at nights——

Lord Chief Justice Abbott.—We cannot hear, now, the character of a person who has been examined at this bar arraigned in this way; if he had been guilty of any offence he might have been tried for it.

Brunt.—I will state nothing but facts; I have had a steel in my hand that he stole; he sold it for 3s. 6d. and cheated the boys who stole it with him; am I to harbour this in my mind?——

Lord Chief Justice Abbott.—If there is any thing in it, it ought to have been proved on the trial.

Brunt.—My lord, there are a number of witnesses I could call, to shew the guilt of this Edwards. There was a witness I was willing to call, to prove that he wanted to sell something in Warwick-street, in order to use the money in buying these arms—why have you not brought that person forwards? he was subpoenaed by the Crown, but they would not call him; and so then I was told, these witnesses could not come forward on our parts at the trial; but he wanted to get money to purchase these grenades and fire-balls, which he well understood, for he said he had had a college education; for my part, I know no more about a fire-ball, I know no more about those things than a child unborn, and no man can say, from the evidence, that I made any of them. Adams says, Edwards made the fire-balls and the fuses, and I am to suffer for what he has done. I must confess, and I will confess, and I wish it to go abroad to the world, that I have an antipathy to a man whom I consider as an enemy to my country; that I possess a general feeling for those termed the lower orders, who are the stability of my country; that I regard an industrious man, a moral man; and when I see a man, or a set of men, such as my lord Sidmouth or my lord Castlereagh, who have been the cause of millions being murdered, and tens of thousands starved to death, that I have an antipathy against those men; but if I conspired to put them out of the world, is that high treason? I never did agree, and Adams has acknowledged at the bar, that when it was proposed to make an attack on London, while the king's funeral was carrying on, I rejected it, and said, nothing short of attacking the cabinet, or some of the ministers, would satisfy me—this I acknowledge I agreed to; but for a verdict to be returned against me, that I conspired to depose his majesty, that I conspired and intended to levy war, is untrue. I never did; and here I must certainly make an appeal to the learned judge who tried me, and that is, respecting a

question that was put by one of the jurymen, I believe a gentleman by the name of Mr. Goodchild : if this is law, certainly I am a very illiterate character, I know nothing of law ; but I should wish to know from the gentlemen who sit and stand round me, is this law ? My lord, he stated it in these words. " My lord, I wish to be informed on a point of law, is arming and resisting the civil power, levying war." To which the learned judge answered, " Yes." If this is law, gentlemen, certainly I am guilty—I certainly am guilty, if this is law ; but it is law only in my case. Gentlemen, it is not law I am well convinced, ignorant as I am ; it is not law I am certain ; and as for the whole course of this evidence, it has never come out that ever I was seen by the soldiers, or that ever I was recognized by the officers. When the officers came, being, as I acknowledge I was, in the place, I made the best of my way I could ; but to say I have been guilty of high treason, I have been guilty of no such thing ; and I will not go out of the world with the stigma of its being said, that I have been a traitor to my country and my king. Say I was an enemy to lord Castlereagh and lord Sidmouth, and the rest of the cabinet, but do not heap upon my head, that I am a traitor to my king or my country. I never suffered any man to run on against my sovereign in my life, and why should high treason be reckoned to me ! If any man has done a thing of that sort, let him be punished for it ; but I should not have been here on that charge. Let me be tried for murder, if I have committed it ; but I am no traitor—I am no enemy to my king. I have a love to my king and country ; but I am an enemy to the boroughmongering faction, that destroys the vitals of my country ; but to my king and my country I am a loyal and dutiful subject. I consider the king equally enslaved as the people, by those very men ; if you mean to say the sovereignty of the people is vested in the boroughmongering faction, then I am guilty of high treason ; but if you do away with that, the verdict ought to be set aside.

Now I will go a little further ; when the jury were called back, the learned judge will admit this I am sure, whether it might be that he did not hear I will not say, I will not impute wrong motives to the judge, whether he did not hear the question I cannot tell, but I will presume to say this, that two of the learned judges, the one on his right and the other on his left, immediately rose from their seats, and whispered to the learned judge that tried me. I have not the pleasure to know his name, nor is that material, but the jury were called back, and he wished the gentleman to repeat the question again, at which he was very confused, as, I dare say, a man of common capacity in a crowded court is, and he may make an error ; he begged the judge's pardon for intruding, but he considered it a duty to put the question to the judge ; and the learned judge said, the conspiring and

aiming to depose the king, was a levying of war. This is a different question from that put by the jury—this is a very pretty perversion of justice—I maintain, if I were tried again by an honest jury, an honest set of men, give me justice, and there is no man on the face of the earth can prove me to be a traitor. Even Adams acknowledged that the moment Ings and I came into the room, after we had heard the proposal of Harrison, we said no, we would have nothing to do with it, that nothing would do but putting those obnoxious characters out of the way—I mean obnoxious to us, not to you, gentlemen, to the man who has nobody to look up to to protect him, and who, when he petitions and cries for bread for his family, can get none. I have been in the habit of earning three or four pounds a-week, and then I never troubled myself about government ; but when I came to earn, perhaps, not ten shillings, I began to inquire why I had a right to be starved ; the Creator of the world, who made the world, gave every man a right to live in it ; and why it was taken from the people, and I and thousands more should be starved, why men who toiled should not enjoy a little, and why millions should toil and some few should dissipate it ; and this brought me to the conclusion of being an enemy to those men. After the massacre of Manchester, but not before, when I considered there was not sufficient, with heaping up all the treasure in the country, to relieve the country, but that these men were starving them to death, literally starving them to death, and that yet they were not satisfied, but they must call in ruffians, not men, to murder them, for I am a descendant of the ancient Britons. I thought nothing could be too bad for those men, and there would be men in the country who would come forward and join me ; Edwards told me he had got plenty, and I was willing to be one ; I am satisfied nothing can be done in this country if men are afraid of their lives. I do not mean to say that I was not willing to die in it—I was willing to do even murder in liberty's cause ; and I would have died there upon the spot, if my lord Sidmouth and lord Castlereagh had come to take me, they should not have had me ; but when I heard the man say at the door, the soldiers are coming, I made the best of my way off ; I found the thing could not be done then, and now I am indicted for high treason. If resisting the police, if resisting a man that came into the room and stood forward, as I declare a man did to this man (*Thistlewood*), and said, if you make any resistance I will blow your brains out, is treason, where is the man that can withhold his arm then ? Is not my life as dear to me as a peace officer's life ? certainly ; had the man come as a soldier, I should have said, he has sworn allegiance to the king, and it is my duty to obey him ; but when a man comes threatening me with authority, without shewing a warrant, and threatening to kill me, here is an arm that, while there is a nerve in it,

shall resist. This is the extent of my guilt, but why say I am guilty of conspiring to levy war or depose the king? I have never been guilty of any thing of the sort.

Now, gentlemen, on the other hand, as I am here for the last time of declaring the truth which I know, I will declare another fact respecting the two Monuments, upon whom the learned solicitor-general did not forget to pass the highest encomiums for gravity; their appearance standing up there at that bar; they were such pure witnesses that no man in his senses could doubt that they were very good indeed; these two witnesses came forward here to swear the lives of eleven individuals here, and I know they have rehearsed their evidence as common as they do a new piece at the theatre; these men have been in the habit of meeting twice a-week in the Tower; I know they have met twice a-week; I do not even know their christian names, but I believe they were John and Thomas; the one who is in custody said to me at Cold-bath-fields, and at Whitehall, at the Treasury, that he knew me, and why did not I tell him something; I told him for certain reasons, namely, because I did not know myself; he says at this bar he was instigated by fear to come; and he said to me in the room, "why did not you tell me what was going to be done, and I would have brought my brother;" then when he sees me at Cold-bath-fields, he says, why did not you tell him more? and I said, because I knew nothing more. Then my lord Sidmouth, who has a very great feeling to us, or the public in general, sends his brother to him; but, my lord, I have a previous remark to make—my lord Sidmouth told him, in the first instance, "I will be a friend to you;" that would enliven him very much, and if he could have sworn all the Englishmen's lives away that were upon the earth, he would have done it; and as a small memorandum, says he, he sent my mother a pound note, as she was very much disturbed; then this very man, who is coming as an evidence against us, goes twice a-week to the Tower, and, because his brother knows nothing there, he tells him something; they rehearsed together, and they do not deviate a jot or a tittle; how can they, till one of them comes to speak of what passed in the room, and then the brother was not there; this is admitted to be a very excellent witness; it must be famous evidence to take my life upon, when they met twice a-week for two or three months, to compare their evidence, in order to take my life; he swears, that I said I would sooner perish myself than the cause should be dropped; and Adams swears, that I said if there were only six or eight I would be one. To take my life away on such evidence cannot be justice.

I expect to go out of the world shortly; I care not how soon it is, for I shall die with the same sentiment that I stand here; I know that injustice is done me, and that I have an undoubted right, as an Englishman, to demand

justice in this Court; I never conspired, and no man can be found, unless he is a villain and a traitor, to say that I conspired to depose my sovereign, or that I conspired to levy war, unless therrepulsing the police officers is treason; if you call that treason, I am guilty of treason; and I admit that I and others have agreed to attempt that which I wish we had done; for if I could have seen some of those men put out of the way, I should have thought the country would have been highly compensated, for I think it is what they merit, I actually think it is what they merit; I think the circular issued by lord Sidmouth was nothing but a thing sent out to instigate the cavalry to murder those men at Manchester; and if a man murders my brother I have a right to murder him. What does the scripture say, "An eye for an eye, and a tooth for a tooth." I have no private enmity against any gentlemen in the country; it was for the public good that I came forward, and I would have gone through with it. I declare, at the hazard of my life, which I cared nothing for, but the king's name was never called in question where I was; and as to the attempt to find me guilty of conspiring to depose his majesty, or to levy war against him, I am not guilty; the verdict ought to be set aside. Try me for murder—hang me—draw me—quarter me—but let me have justice, that is all I have to say.

Tidd.—My lords and gentlemen, being only found guilty so late last night, I have not had an opportunity to make up any defence; for my own part, I am a very indifferent orator, or perhaps I might have brought in something more satisfactory; but all I can say is this, that I do positively say, that every evidence that came against me swore falsely, exclusive of that gentleman there, captain Fitzclarence, and he stated, that he did not know that I shot at him; but sooner than I would shoot at that gentleman, as a private gentleman, I would shoot my own father. I cannot say further, gentleman, for I am not prepared.

Wilson.—Gentlemen, I am not gifted with a tongue much to say much, but I certainly have been drawn into this by Hiden.

Harrison.—They were all false witnesses; they have all sworn falsely against me.

Bradburn.—My lords and gentlemen, the evidence that Adams has given against me I consider is not right.

Strange.—I have only thus much to say, gentlemen, that as to the evidence that Mr. Brunt's apprentice, Joseph Hale, and likewise Mr. Adams gave against me, I declare solemnly to God, before whom I now stand, and the gentlemen round, they are both perjured villains.

Gilchrist.—What I shall say I will say as in the presence of my God, and before you. I knew nothing of it till about four o'clock in the afternoon; I was going to look for work;

I had neither money nor bread, so I met with a man who told me to come to the Horse and Groom, that they were going to have a supper there. I was not a man that suffered myself to be among radicals, but I had nothing to eat, and absent from my friends, and none to help me. I went to the place appointed, as I have stated to my Attorney, and likewise stated to my lord Sidmouth, at six o'clock at night; I cannot cut it short; I must tell the truth; I went to the place at six o'clock at night, and met four or five men whom I did not know, but Charles Cooper. I borrowed a halfpenny, and bought some bread at a shop; with that I followed Hiden; I was a few yards behind him in going to this shop; before I could get a penn'orth of bread they were away from me; I followed them on, not knowing what I was going about; as my God hears me that is true, and I never wish to come out of this place if I say any thing false. I went on, not knowing what I was going about, and when I went up stairs, in a very little time came in bread and cheese; I took an old sword and hacked it down; the men came round seemingly as hungry as I was, and I never asked, 'till near about the conclusion that the officers came, the meaning of those arms; this very man that came here was the very man that answered me first; he says, you shall know by and by; there is one that we expect to come; says I, I am not willing to stop here; says he, ranging the swords, any man that shall go out here I will run him through. I immediately, in a manner, went backwards from the end of the table, stepping towards this little man, and I was then going to make an excuse to get away out of this company, when up came an officer, and the words that he said were, "Lay down your arms." I heard no more; I was confounded. I knew by his neckcloth, and the appearance of a gentleman, that it was my duty to surrender myself. I never had any thing in my hand, but that sword that I cut down the loaves with, and I stand here convicted of high treason. I served my king and my country twelve years, and this is the recompense; O God! I have nothing more to say.

Cooper.—My lord, I have very little to say; I am brought in here unexpectedly this morning; I did not expect to be called up so soon; in the first place, they have called no evidence, but they convict me of high treason, I have been given to understand. I consider, my lord, there is no evidence to convict me of high treason; I am certain of that. It was my intention to say more, but it seems the desire of my friends, that I should say nothing more; but I consider myself a voluntary exile for the good of my friends.

Gilchrist.—I would volunteer myself, if my life would save another man's. I never knew this man (*Cooper*) till I came into this room, but with compassion I will resign myself, if it is to save another man's life. I am innocent; indeed I never meant to take any man's life.

SENTENCE.

Lord Chief Justice Abbott.—Arthur Thistlewood, William Davidson, James Ings, Thomas Brunt, William Tidd,—you have severally been tried and found guilty upon an indictment charging you, together with others, with the crime of high treason, in compassing and imagining to levy war against his majesty, in order to compel him to change his measures and councils.

John Harrison, Richard Bradburn, John Shaw Strange, James Gilchrist, Charles Cooper,—you being each persons charged with the same offence, by the same indictment, originally pleaded Not Guilty to that indictment, but after the trial and conviction of the five persons first indicted, you desired to be allowed to withdraw those pleas of Not Guilty, and to plead guilty to the charge of treason imputed to you by that indictment, and you were permitted so to do.

James William Wilson, you having been charged with the same offence, pleaded to that indictment a mistake in your name—of that plea you had the benefit, but it was a benefit that could not long be of any avail; another indictment for the same offence was preferred against you, and to that indictment you, after the trial of the five persons whom I first named, have also thought proper to plead guilty.

You, therefore, James William Wilson, John Harrison, Richard Bradburn, John Shaw Strange, James Gilchrist, and Charles Cooper, have thought fit voluntarily to acknowledge the crime with which you are charged, and to cast yourselves upon the mercy of your sovereign. If any of you shall have your life spared, which as to some of you I trust may be the case, I hope you will always bear in your minds, that you owe that life to the benignity of your sovereign—to his merciful disposition, aided and seconded by the merciful disposition also, of those very persons whom you had doomed to a violent and sudden death.

One of you (Arthur Thistlewood) has now complained, that at your trial, you proposed to call certain witnesses, whom the court refused to hear. It is true that you did request permission to call a person with a view of impugning the testimony of a witness of the name of Dwyer, and no other, as far as I then understood; the learned counsel, whose assistance you have had, previously called witnesses for the same purpose; it could not be allowed to you, according to the ordinary course in which justice has been administered in this country for ages, at that time to adduce such evidence; nor, indeed, could it have availed any thing, if you had been allowed so to do, because your case did not depend upon the testimony of that witness alone; and three several verdicts pronounced upon the same conspiracy, by juries before whom that witness Dwyer was not examined, have shown that the testimony of that person was not necessary to establish the conspiracy, or to prove the guilt of any of those concerned.

Some of you have thought fit to say much of a person who has not appeared as a witness upon this occasion. We proceed only upon the evidence that is laid before us; of that person, therefore, to whom you have alluded, or of his actings, we have had little proof; upon the testimony, however, that was adduced against you, there was abundance to satisfy the juries of your guilt, and that each of you voluntarily took a most active part in the treason.—From all that has appeared in the course of these trials—from much that has been now urged by many of you, the Court has plain reason to see that you did not embark in this most wicked design, till you had first suffered your minds to be corrupted and enflamed by those seditious and irreligious publications with which, unhappily for this country, the press has so long teemed. Your case shows that which indeed, even without evidence, may in the case of all great crimes be reasonably presumed, that no man wholly forgets his duty to his king, or his duty to his neighbour, until he has put from his thoughts the fear of God and a future state. I make not these remarks to aggravate your guilt, or to enhance the sufferings of your present situation; I make them as a warning to all those who may hear of your unfortunate end, that they may be taught by your example to avoid those dangerous instruments of seduction, by which the heart of man is influenced to every evil deed, and is withdrawn from every moral and proper sentiment.

The treason with which you were charged, and of which you have been found guilty, was that of compassing and imagining to levy war against his majesty, for the purpose of compelling him to change his measures and councils. The assassination of those persons by whom the affairs of his government were at that time, and had for some time before, been administered, was intended by you as the first, but by no means the only step to be taken; many of you hoped, that at that same instant, other persons, connected with yourselves and acquainted with your designs, would make violent attempts in other parts of this great metropolis, to seize arms and ammunition, and who were to be joined by you after you should have accomplished that abominable purpose. You vainly hoped that there were in this great town, thousands and tens of thousands ready to join you in your purpose of mischief and destruction, and to enable you to assume the whole government of this country into your own hands. To the proof of that intention on your part, the evidence of all the witnesses concurs; and the gentlemen of the jury by whom you were tried, must have been satisfied that the assassination of his majesty's ministers was a part only of the purpose which you had contemplated.

You have endeavoured now to complain of the testimony of some of those persons who were examined as witnesses against you; several of them were accomplices in your guilt. It has happened to you on the present occasion

as to many others before you, that the principal instruments by which you are brought to justice, are persons who have partaken in your own guilty design. I trust that that circumstance will have its due weight in the consideration of all who shall become acquainted with your situation, and with the circumstances of the trials, and that they will ever, for the sake of their own personal safety, if they cannot be restrained by any other consideration, be induced to abstain from those evil combinations and confederacies which have brought you into the melancholy situation in which you now stand. The intention to assassinate has been now avowed by some of you; an intention to which, all that we had ever heard of, before we became acquainted with your case, bears no comparison. That individuals, laying aside the national character, should meet and assemble to destroy the lives, in cold blood, of fifteen persons unknown to them, except by public character, is without example in the history of this country, and I hope will remain without a parallel in future times.

It now only remains for me to pass upon you the awful judgment of the law; but before I do so, let me exhort you to employ the time that may yet be left to you, in endeavouring to obtain mercy from that Almighty Power whom you have so deeply offended; the mercy of Heaven may be obtained by all who will duly seek it; but it must be sought in penitence and in prayer, sorrow for your crime, and prayer to the Almighty for mercy, through the merits of our Redeemer. Whether the exhortation that I have offered to you will be by you received and acted upon, it is not for me to say; but I again, once more, solemnly intreat you not to suffer your eternal happiness to be lost by a perseverance in that hardness of heart which too many of you have exhibited even in this place at this time. Repent, I exhort you—repent, and obtain the mercy of that God whom you have offended. The judgment of the law is, that you, and each of you, be taken from hence to the gaol from whence you came, and that you be drawn on a hurdle to the place of execution, and there be hanged by the neck until you be dead; and that afterwards your heads be severed from your bodies, and your bodies divided into four quarters, be disposed of as his majesty shall direct, and may the God of mercy have mercy upon your souls!

Tidd.—The irons I have got on are so heavy, that I cannot step; my legs are very tender, they have been very bad for some time.

Lord Chief Justice Abbott.—I have no doubt the keeper of Newgate will do every thing in his power to contribute to your ease, so far as it can be done with safety.

Mr. Attorney General.—My lord, an order was made three days ago,* directing Mr.

* See the proceedings at the commencement and conclusion of the trial of John Thomas Brunt *supra*.

Clement, the proprietor of the Observer, to attend here this day at nine o'clock, to show if he could give any reason why he had published the trial of Thistlewood and the trial of Ings, notwithstanding the injunction of your lordship. I have an affidavit of the service of that order.

[*William Innell Clement was called, but did not answer.*]

Lord Chief Justice Abbott.—Let the affidavit of service be read.

[The affidavit of Elijah Litchfield was read, stating, that he had, on the 26th instant, served the order of this Court above referred to, upon William Innell Clement, by delivering it to a servant of Clement, at the house of Clement, No. 169, in the Strand, at the same time showing to the servant the original order.

The order was read, directing William Innell Clement, the printer, publisher, and proprietor of a certain newspaper, called the Observer, to attend this Court this morning at the hour of nine precisely, to answer for unlawfully and contemptuously printing and publishing in the said newspaper, the trials of Arthur Thistlewood and James Ings, for high treason, pending the proceedings against John Thomas Brunt and others, who were included in the same indictment with the said Arthur Thistlewood and James Ings, for the same high treasons, contrary to the order of this Court and to the obstruction of public justice.]

Mr. Attorney General.—My lord, I have also an affidavit, which will satisfy your lordship of the extent of this publication; an affidavit of the register of newspapers in the Stamp-office, and also another person, that on the 15th day of April instant, there were supplied at the Stamp-office, for the use of the Observer-newspaper, published by William Innell Clement, of No. 169, Strand, in the said county of Middlesex, fifteen thousand stamps; and on the 21st instant, three thousand stamps, for the same paper; and on the 26th instant, five thousand stamps for the same paper, making a total of twenty-three thousand. The other deponent then states, that he has for the last six months supplied ten thousand stamps every week for the said Observer-newspaper; so that it appears that during the last week, in consequence of the publication of these trials, they had stamps to the extent of twenty-three thousand. This Sunday newspaper was published in a double sheet, one sheet containing the trial of Thistlewood, and the greater part of the other occupied by the trial of Ings; and in this very paper, as I have stated to the Court, there is a notice given by the lord chief justice on the first day, on the commencement of the trial, interdicting the publication of these trials, so that this person has knowingly published this against the express injunction of the Court.

Lord Chief Justice Abbott.—Is the newspaper a weekly paper?

Mr. Attorney General.—Yes, my lord; the price paid for the two sheets by the person who purchased it, who was a newsman, was a shilling; the price paid by the public is sevenpence for each sheet.

It will be in the recollection of your lordship, that at the request of the prisoner's counsel, the witnesses for the prosecution were desired to withdraw from the court, in order that they might not be apprised of what was passing during the examination of others; and undoubtedly your lordship's order was intended more for the benefit of the prisoners than otherwise, that the subsequent juries might come, with as little knowledge as possible of what had passed, to the consideration of the cases they were to try.

Lord Chief Justice Abbott.—No person can rationally doubt that the publication which has been complained of, manifestly tended to obstruct the course of public justice; it is extremely desirable that all the gentlemen who may be assembled as jurymen to serve on any trial should come with minds as little influenced as possible by any thing that may have taken place on any former trial. It was requested by the learned counsel for the prisoners, that the witnesses to be examined on the part of the Crown at the first trial should be examined separately, that no one should know what another had said; but by the publication of what had been said on any one of the trials, the persons summoned as witnesses were enabled to obtain that knowledge previously to a future trial, which it was the proper desire of those who were intrusted with the interests of the prisoners to prevent their obtaining. The mischievous tendency of such publications cannot, as I have already said, be doubted by any mind; the Court thought it right before the first trial was begun, to express in the strongest terms its opinion as to the impropriety of any such publication, and to admonish those who were concerned in the publication of the daily or weekly papers to abstain from such insertion; to that admonition it seems the editors and publishers of all the daily papers, and, as far as I am informed, of all the weekly papers, yielded a due and respectful obedience, with the exception of the single person whose case has been brought before us; that person, therefore, must have been led to this by a desire of gaining to himself extraordinary profits, by becoming the first who was to gratify the public curiosity, by the publication of these trials—a desire to engross the whole of the profit to himself, in contempt of the admonition of the Court, in contempt of the general rules and principles of law, and to the prejudice of all persons concerned in the public newspapers, who had, as I observed before, yielded obedience to the law and to the admonition of the Court.

Being called upon now by an order of this

Court to answer for this contempt alleged against him, and to offer what he might think fit either in justification or in excuse of his conduct, he does not appear so to do. By thus withdrawing himself, he saves himself certainly from that imprisonment which, if he had been present the Court would have thought it right to inflict; but he must not save himself, nor ought he to be allowed to save himself from another species of punishment, which in his absence, under the circumstances of his having had notice to attend, it is in the power, and therefore it is the duty of the Court to inflict. Under these circumstances, therefore, the Court, approving highly of the conduct of those persons who yielded to its admonition, disapproving as we must do, in the strongest degree, of the conduct of the individual against whom the application is made, think it due to public justice to order that William Innell Clement do, for this contempt, pay to the King a fine of 500*l*.

[*Vide* R. v. Clement 4 Barn. Ald. 218; Watson's case, 11 How. Mod. State Trials 80,

109, 111, 538; Brandreth's case *ibid.* 766, 779; Turner's case *ibid.* 957.]

On Monday, the 1st of May—Arthur Thistlewood, William Davidson, James Ings, John Thomas Brunt, and Richard Tidd, were brought out to a platform erected in front of the debtors door, Newgate, where they were hanged until they were dead, when they were cut down, and their heads were severed from their bodies, his majesty having been graciously pleased by warrant to remit that part of the sentence which directed that their bodies should be divided into four quarters, and to direct that the bodies, and heads, should be forthwith privately buried.

James William Wilson, John Harrison, Richard Bradburn, John Shaw Strange, James Gilchrist, and Charles Cooper, received his majesty's pardon, on condition of being transported to such place beyond the seas as his majesty, with the advice of his Privy Council, should be pleased to direct, for life.

A D D E N D A

TO THE CASE OF VALENTINE JONES, Esq.

*Vol. X. of this Continuation, Page 336.**

COURT OF KING'S BENCH,

14th JUNY, 1809:

Mr. Attorney General.—I am to move your lordship for the judgment of the Court against Mr. Valentine Jones.

Mr. Dallas.—In point of form, I ought to request of your lordships that the gentleman before the Court may be permitted to sit.

Mr. Attorney General.—I make no objection.

Lord Ellenborough.—We understand that the defendant is in a situation requiring it: indeed the manner in which he came into Court shewed it.

Lord Ellenborough read his report of the evidence on the trial.

The following Affidavits were read:

Valentine Jones, late of the parish of Batheaston and county of Somerset, now confined in the King's-bench, the defendant named in the indictment tried at Westminster on the 26th day of May last past, maketh oath and saith; that he this deponent, having previous to the year 1795 served in divers public situations of credit trust and responsibility in his majesty's service in the West Indies, had the happiness to acquit himself in them all with general satisfaction and approbation, and that having in the said year 1795 received the appointment of commissary-general and superintendant of stores, provisions and extraordinaries to the army serving in the Leeward islands, he this deponent embarked for his station in the fleet under admiral sir Hugh Christian, and after an unsuccessful attempt to perform the voyage, and after the dangers and difficulties so well known to have attended that enterprise during eight weeks' storms and contrary winds, returned to England in so impaired a state of health that he despaired of being able to fulfil the appointments aforesaid, and endeavoured to obtain permission to resign the same; but that not finding he would be allowed to do so, this deponent made an effort to embark again in the fleet under command of admiral Cornwallis in March 1796, in which he was prevented by a most dangerous attack of gout in his stomach, which had nearly put

an end to his life; that this deponent, however, still animated by zeal to do that duty which had been so particularly required of him, lost as little time as possible, when he had sufficient strength, in going from Portsmouth to Falmouth, and there embarking in a packet for the West Indies: that on his passage the deponent was again attacked by severe illness from the gout; but finding, on his arrival at Barbadoes on the 23rd of April 1796, that an armament under the command of general sir Ralph Abercrombie had sailed against the island of St. Lucia, this deponent, although obliged to be carried to and from the shore, did immediately follow and join the said armament on the 26th of April at St. Lucia, and entered on the duties of his office, without regard to personal suffering, in a most arduous and difficult employment in the midst of military operations.

And this deponent saith, that on undertaking the vast laborious and extensive avocations of his appointments aforesaid, he had but one deputy commissary general under him, and three assistant commissaries at a time when more aid and assistance were required than at any other period ever known in that country, and during the whole of his employment; whereas at subsequent periods in more circumscribed service four deputies have been allowed and treble the number of assistants.

And the deponent saith, that the calls of the service and supply of so large an army (for the wants of which calculation was to be made on the scale of 30,000 persons) required him to leave a general agent, with means competent to undertake the supplies, and having general connection with the chain of islands wherein the said troops were stationed; and accordingly this deponent having renewed a contract for vessels with Mr. Matthew Higgins (who had furnished the same by a former contract previous to the arrival of the deponent), he did also engage with the said Higgins to be the merchant or agent to do the greater part of the business required as to furnishing stores of all kinds; and this preference the deponent gave to him the said Matthew Higgins, from his having been employed as a contractor and being a creditor of the public to a large amount; and also from his possessing the good opinion of the commander in chief, sir Ralph Abercrombie, to whom the said Matthew Higgins had been useful in the negotiation for surrender of

* The proceedings, subsequent to the trial of Valentine Jones, having been mislaid, were unavoidably omitted in the Volume which contains the trial itself; but as they have since been recovered, they are here inserted.

the colonies of Demarara and Berbice to his majesty's arms; and further, from the said commander in chief having expressed to this deponent that he could not do better than employ the said Matthew Higgins.

And this deponent saith, that by the first contract for vessels which the said Matthew Higgins had with quarter-master-general Knox, he was to provide for the pioneers of the army, which part thereof this deponent would not renew, but consulted the interest of government in altering the same.

And deponent further declareth and saith, that during the whole time the said Matthew Higgins continued to furnish supplies, he, the deponent, never did, directly or indirectly, take any steps to enhance the profits thereon or interfere therewith for his own ultimate benefit; always believing that the public service was benefitted by the manner in which the business was done. And he believes that if he, this deponent, had not confined himself so much to the said Matthew Higgins, but had purchased generally of the merchants, the articles would have cost government in the aggregate as much as was charged by him the said Matthew Higgins. And this deponent verily believes the same, from his observation at the time and inquiries since.

And this deponent further saith, that he most solemnly declareth, that with the accounts of the said Matthew Higgins, made out for his agency, he had no connivance in fraud, if such there be, and that he was perfectly innocent of any delusion in the mode of making out the same by the said Matthew Higgins or his sub-agents for any sinister motives; And that he, this deponent, cannot be charged with any fiction or deception whatever to the injury of the public on his part, with regard to such accounts, as the contents thereof are all duly fully and specifically debited to this deponent in kind, and the consumption thereof accounted for by him, and himself made responsible therefore.

And this deponent here further saith and declareth, that the letter written by him to John Glassfurd, deputy commissary general (which from misconception of its contents and a mistaken construction of its terms has been deemed injurious to him and dictated by conscious misconduct) has no connection whatever with his dealings with the said Matthew Higgins, or any bearing on the case in which he is implicated with him, as the terms used in that letter do not in anywise apply to provisions, or bills for provisions, or purchases or transactions between him and this deponent; but that the said John Glassfurd having had chiefly under his direction that portion of the business which appertained to deliveries to the

issuing commissaries, for the purpose of literally feeding the troops, and the receiving their bills and vouchers, and this deponent, by under many difficulties been obliged to make up the accounts finally from the perfect papers transmitted to him by the said Glassfurd (papers which the secretary himself of the West India commissioners had in charge for the deponent and knew the mutilated state of), had nor could have no other meaning than that the said deputy commissary general should not, by any new statement alter the official mode by which deponent had arraigned the imperfect documents before furnished by the said Glassfurd himself: and the suggestion that the said deputy might not remember points of business so long gone by, arose from the conviction that he literally and truly could not (by reason of the difficulties with which the complicated and multiplied vouchers in detail had been collected by him) bear them in remembrance; for this deponent saith that the vouchers here described relate to the serving out in the fields, on marches, on the water, in quarters, and in every possible circumstance of the service, to the amount of upwards of twenty millions of rations issued, and to the accounting for every pound, ounce, gallon, pint, or more minute delivery.

And this deponent on his oath further saith, that he never intended by any expression in the aforesaid letter to prescribe to the said deputy commissary general what he should say as a witness upon oath; nor could the deponent fear any thing from him in that character; which the deponent is warranted in saying, nothing having been produced from any examination of the said John Glassfurd against him, this deponent, in his office of commissary general, his department in which fell under the constant observation of the said John Glassfurd.

And the deponent saith that he has not only rendered accounts and vouchers long since for the issue and expenditure of every species of stores coming to his hands in any way, but that in six weeks after his return to this country (that is to say on or about the 14th day of August 1798) this deponent delivered in accounts and vouchers for all the expenditure of cash and bills of exchange which had passed under his direction to the amount of more than two millions sterling, and that as soon as he was required by the lords commissioners of his majesty's treasury to pay the balance due from him to the public, he, this deponent, did pay the same without hesitation, in the manner ordered, in six months after his return from his official station in the Leeward Islands.

And deponent saith that he was kept in the execution of his office there, contrary to all remonstrances and requests to be relieved, for twelve months after his knowledge of the rumours spread against him; but neither in that time or any other did the deponent use or adopt any measure of enriching himself by borrowing from the public funds under his control for purchases and speculations, which he could, in common with many, have made with vast emolument. And this deponent saith, that on the subject of the indictment upon which he has been tried it would ill become him to say one word, further than that he has not shrunk from the charge, or attempted to withdraw himself from the justice of the country. Whatever the extent of his offence may have been, the deponent waits with submission the punishment for that offence which this Court may think fit to inflict.

And this deponent further saith, that a mind distressed and agitated has increased the sufferings of a body worn down by an afflicting malady, and previously exposed thereto by fourteen years spent in public occupations in an unhealthy climate; that he is seldom free from the gout, the consequences whereof are contractions of the joints, and that from exposure to cold and damp situations the deponent might be liable to the loss of the use of his limbs—if not of life.

Thomas Broughton, clerk, A. M., rector of St. Peter's in the city of Bristol, and one of the acting magistrates for the county of Gloucester, maketh oath and saith, that he hath known the above-named Valentine Jones for thirty years now last past, and that he has been intimately acquainted with him for a considerable portion of that period; and that during all such time he has been so frequent a witness of his many excellent qualities, that he has always esteemed him as a man not only of the most humane and benevolent, but of the most upright and honourable character, and that he is one of the last persons amongst his acquaintance he should deem capable of any intentional misconduct.

Thomas Howard Griffith, of the city of Bath, esquire, maketh oath that he knows the above-named defendant Valentine Jones, and that he knew and was well acquainted with him for near ten years during his residence in the island of Barbados, and has since known him during his subsequent residence in England. And this deponent saith, that the said Valentine Jones was received and much esteemed in the first ranks of society in the said Island of Barbados, and always conducted himself in an upright manner, and with honour and credit; and

was looked upon as a person of very estimable character and unsuspected integrity.

George Phillips, of French Hay near Bristol, in the county of Gloucester, esquire, maketh oath and saith, that he has known the above-named defendant, Valentine Jones, esquire, from a very early period of his life, and for the space of thirty-six years, and during a considerable portion of which time he hath been intimately acquainted with him. And this deponent saith he hath known many instances of the said Valentine Jones's excellent qualities as a member of society, and he hath always esteemed him as a man, not only of the most humane and benevolent disposition, but of the most upright and honourable character.

John Cobham, of Berkley-square, in the city of Bristol, esquire, maketh oath, that he knows the above-named defendant, Valentine Jones, and that he knew and was well acquainted with him for thirteen years, during his residence in the Island of Barbados. And this deponent saith, that the said Valentine Jones was received and much esteemed in the first ranks of society in that Island, and always conducted himself in an upright manner, and with the greatest honour and integrity, and was looked upon as a person of very estimable character, and respected by all who knew him.

Samuel Perry, of Park-street, in the city of Bristol, esquire, maketh oath that he has known the above-named defendant, Valentine Jones, for the space of twenty-five years last past. And this deponent further saith, that he was intimate and well acquainted with the said Valentine Jones for fifteen years of that period, during his residence in the Island of Barbados. And this deponent saith, that the said Valentine Jones was received and much esteemed in the first rank of society in that Island, and always conducted himself in an upright manner, and with great honour and integrity, and was looked upon as a person of very estimable character.

The Reverend *John Brome*, A. M. (at present of Welbeck-street in the county of Middlesex, and a member of his majesty's council in the Island of Barbados), maketh oath and saith, that he personally knew the above-named defendant Valentine Jones for several years during his residence in the said Island, where he filled the office of clerk of the council and deputy secretary, offices of considerable trust and importance, in the execution of which this deponent always understood, that the said Valentine Jones conducted himself with the utmost correctness and propriety.

And this deponent further saith, that the said Valentine Jones was at that time received, and considered by the first ranks of society in the Island of Barbados, as a gentleman of great respectability, and generally esteemed a person of strict honour and integrity.

Thomas Fowkes Luttrell, of the city of Bath, in the county of Somerset, esquire, maketh oath and saith, that he knows the above-named defendant Valentine Jones, and that he knows and was intimately acquainted with him, for the space of about three years and a half during his residence in the Island of Barbados. And this deponent saith, that he has always considered the said Valentine Jones as a man of the strictest honour and integrity, and incapable of any intentional misconduct.

John Randall Phillips, of Winterbourne, in the county of Gloucester, esquire, maketh oath that he knows the above-named defendant, Valentine Jones, and that he has known him for the space of fifteen years last past. And this deponent saith, that he was intimate and well acquainted with the said Valentine Jones, for about five years, during his residence in the island of Barbados; and this deponent further saith, that the said Valentine Jones was received and much esteemed in the first rank of society in that Island, and conducted himself in this deponent's estimation in an upright manner, and with the greatest honour and integrity, and was looked upon as a person of very estimable character.

Robert Lovell, of the city of Bristol, doctor of physic, maketh oath and saith that he hath known the above named defendant, Valentine Jones, for upwards of twenty years last past, and that during the said Valentine Jones's residence at Naish House near Bristol, and afterwards at Bath, he this deponent has frequently in the capacity of his physician, attended him in very deplorable and distressing attacks of gout, which have confined him to his bed and room for weeks and even months together.

And this deponent further saith that he is well acquainted with the constitution and general state of health of the said Valentine Jones, which have been greatly impaired by the frequent and violent attacks of gout with which he has been afflicted, and from which attacks he is never free for any considerable length of time together.

And this deponent further saith he has also found the health of the said Valentine Jones, during the period he has attended him professionally, greatly affected by change of situation and states of the atmosphere, and for these reasons he this de-

ponent, is firmly of opinion it is absolutely necessary for the preservation of the life of the said Valentine Jones that he should have a free and open circulation of air, and be protected as much as possible from damp and cold.

William Bowen, of the city of Bath, in the county of Somerset, Apothecary, maketh oath that he hath known the above named Valentine Jones for nine years and upwards, during which time he, this deponent hath been the Apothecary to the said Valentine Jones and his family, and this deponent, in his medical character, hath very often attended him the said Valentine Jones. And this deponent is well acquainted with the general state of health of the said Valentine Jones, and that he is of a very gouty habit, and in the course of the above period he hath had repeated and most violent attacks of the gout, some of which have confined him to his bed and room for several weeks together, and that, during the said above specified nine years, he the said Valentine Jones hath seldom been entirely free from the gout. And this deponent saith that the health of the said Valentine Jones has been, during the time he this deponent hath known him, much affected by the change of situation and season, and that in the judgment of this deponent it is absolutely necessary for the preservation of the life of the said Valentine Jones that he should not be subject to any damp or cold situation.

Sir Walter Farquhar, of Conduit-street Hanover-square, in the county of Middlesex, baronet, maketh oath and saith, that in his character of Physician he hath frequently attended the above named defendant, Valentine Jones, for many years past; and that during the last month he hath often visited him in consequence of the said Valentine Jones being afflicted with violent gout, and the unpleasant consequences of a broken constitution; and that his situation was so very critical and alarming that he requested the assistance of doctor Baillie.—And this deponent saith, that from the debility that now exists, his life might be endangered by exposure to cold and damp; in short this deponent is absolutely convinced that the said Valentine Jones's disease is so deeply rooted in his constitution, that nothing but the greatest care and attention can preserve his life.

Samuel Chilver, of new Burlington-street, in the county of Middlesex, Surgeon and Apothecary, maketh oath and saith, that he hath attended the above named defendant Valentine Jones, for many years past in severe attacks of the gout which, in consequence of the very irritable and broken down state of the said Valentine Jones's constitution, have sometimes been

accompanied with symptoms the most serious and alarming,—And this deponent saith that during the last month the said Valentine Jones has been suffering severely from one of his usual gouty attacks, for which he has been several times visited by sir Walter Farquhar, and attended by this deponent. And that from his knowledge of the said Valentine Jones's constitution, he is fully convinced that if the said Valentine Jones were to be exposed to cold and damp air, that imminent risk and danger to his life would be thereby incurred.

Mr. Dallas.—My lords, I am now to address a very few words to your lordships on the part of the defendant. I have always thought, and have often felt, the situation in which I now stand to be precisely the most painful to one's self and the least satisfactory to others that can occur in the discharge of our professional duty. From the nature of the proceeding, the party himself must unfortunately be present, and as, notwithstanding the verdict of a jury, it does not always happen that parties are disposed to admit their guilt, and as the observations of their counsel can proceed upon that footing alone, it often appears to them that a surrender of their innocence is made from that quarter from which they least expected it. On the other hand, if any observation were to be made inconsistent with the verdict, it would be immediately and properly checked by the Court, who must look to the preservation of their own rules. The effect is, to produce a state of embarrassment and difficulty which all of us have felt in our turn, as well those who continue where I now am, as those, who, fortunately for the justice of the country, have been raised to a higher, though in many respects a not less anxious and painful situation.

Looking then, my lords, at this case in the only light in which I am permitted to consider it, that is, through the verdict, I of course can have but very few observations to offer. The fact itself is unfortunately established beyond the possibility of doubt, and with respect to its nature, I fear it cannot become the subject of any opposition in argument. I can therefore only generally lament that this is one other to be added to the long list of innumerable instances in which a person of the most amiable and unblemished character, of the most tried and approved worth and integrity as this gentleman appears to have been, not only from the affidavits that have been read, but upon the testimony given in support of the prosecution, should, at an evil hour, in a moment of self-abandonment have been betrayed into conduct inconsistent with the whole of his former life—that he should have given way, unfortunately, to a temptation which he found too strong to resist.

When I say this, I hope it will not be supposed that while speaking in a court of justice,

or indeed if I were speaking elsewhere, I mean for a moment to insinuate that any temptation can be of sufficient strength to overpower a right and proper sense of duty—most undoubtedly (and I beg to be so understood), I do not mean to extend the observation to any such limits but what we are not permitted to defend we may be allowed to deplore; and I am sure it must be matter of deep regret to every person who has heard the evidence in this court that a gentleman of the defendant's character in life should have reduced himself to the situation in which he now appears before your lordships.

I may at the same time state to the Court, without any concealment, that this is a case in which a despair of doing service and a dread of doing mischief make me advance with fear and trembling; and therefore in the very moment in which I am making these observations, I cannot but perceive the probability that they may be retorted upon me and that I may be told that this is a case in which above all others, the consideration of past character and of past conduct ought to be of the least avail; for the appointments bestowed upon this gentleman, the duties of which he is charged with having violated, brought their remuneration and reward; he was trusted because he had been tried; and there may possibly be pointed out to the Court (and if it were not, I feel it is not possible that it should escape its observation after the report which has been read) the circumstances of the conversation with Mr. Rose after the appointment, and of the increase of salary for the purpose (as that gentleman stated), of securing a faithful performance of the duty. It is quite impossible for me to deny that these are circumstances which may be fairly pressed upon the part of the prosecution; but at the same time I will do the attorney-general the justice to believe that they will not be urged beyond their proper extent.

The conversation with Mr. Rose does not appear to me deserving of much weight; for, admitting, as I do most distinctly, that the hire of duty in this case was perfectly clear, and such as no man could mistake, if no such conversation had happened, the want of Mr. Rose's verbal communication could not have been urged as a circumstance in favour of the defendant, and, therefore I trust that its having taken place will not be pressed to his disadvantage: in truth, in the correct consideration of the subject it has no operation on either side. But the increase of salary stands on very different ground, and I hardly know what observation I dare make upon this part of the case; it seems however to me that if the complaint is to be confined to a mere breach of duty, whether the allowance given was more or less, becomes perfectly immaterial; for I must admit that the performance of duty cannot depend upon the extent of compensation: but if the question is to be shifted from the point of duty and put upon the extent of allowance, then to obviate its effect in point of aggravation

I submit that the salary of fifteen or eighteen hundred a-year to be paid to a man for most laborious duties cast upon him in a country in which the expense of living is necessarily great, in which life is pre-eminently uncertain, in which the middle season of life—that in which provision for the future must be made—might be of short duration. Eighteen hundred a-year under these circumstances ought not, I think, to be pressed as matter of aggravation to make this a case of a worse description than any which have gone before it.

There is another circumstance upon which I would wish to trouble the Court with a very few words, not only as it is of consequence to the defendant, but as it relates to my own conduct in the management of his case. It is perfectly well known, that, on the very eve of this trial taking place, a report of the military commissioners appeared for the first time not merely upon the table of the House of Commons, but it found its way into all the public prints, containing charges of the most odious description against this unfortunate gentleman, and accompanied by comments of the most injurious and inflammatory kind. In stating the case on the part of the prosecution the attorney-general (as it was likely he would do) properly and humanely adverted to this circumstance, and cautioned the jury to forget whatever they might have read or heard, and to confine their attention to the simple charge before them. On the part of the defendant I complained of the circumstance perhaps a little too urgently. In summing up, his lordship stated to the jury that if any such publications had appeared, and had produced any prejudice against the defendant, an application ought to have been made to the Court to postpone the trial—an observation to which I perfectly assented at the time, and of which I do not mean now in the slightest degree to complain. I will merely state to the Court, with their permission, why no such application was made. It was submitted to me by the defendant himself, but when I considered the nature and extent of these charges—the quarter from which they proceeded—that they had found their way into the hands of every man perhaps from the highest to the lowest in this country—that years must elapse before any refutation could take place, so that it was impossible any change could happen in the public feeling in the interval between one sittings and another—feeling as I then did and now do, that, from the nature of these charges, if the unfortunate gentleman being at liberty, were to walk the streets of this town, his life would be in danger—I did not think it my duty to defer the trial to a more distant day (when I foresaw that the public feeling would be precisely the same) at the expense of a continuation of the misery which the defendant must endure.

There is only one other circumstance to which I would draw your lordships' attention, and that is, the dreadful state of this gentle-

man's health. Though I do not mean to say that the degree of guilt can be varied by his state of health, yet in fixing the sort of punishment to be applied, I am sure the Court will attend to it, and will not make that, which would be merely imprisonment in one case, the means of destruction and death in another.

Mr. Attorney General.—My lords, the painful duty is imposed upon me of drawing your attention to those circumstances of this case which, in my view of it, require you not to pass a light sentence upon the defendant. But let me at the same time do him that justice which I should wish to do every man, particularly one against whom it was my duty to bring forward so heavy a charge as that which I have on this occasion proved by incontrovertible evidence. My learned friend has truly stated that the defendant has, in his path through life, in all the relations of civil society, performed his duties correctly and without blame. I think he deserves that character; and to whatever reflection he may justly be exposed, he will find that the recollection of his virtuous acts will be his best consolation: but I must not leave him to hope that they can be of any avail to him on the present occasion, otherwise than as an internal consolation.

Your lordships, I know, feel (as I do) upon this occasion, that you have a painful duty to perform. You feel that it is peculiarly painful to pass a severe sentence upon a man the general tenor of whose life, if you were to except the particular transactions presented to your view, would incline you to mercy; but whom, notwithstanding that, it is your duty to punish as the crime he has committed deserves, and that you must not be led aside by the considerations which have been urged by my learned friend.

I did endeavour, as far as I could, to guard the jury against any impressions that might have been made upon their minds by what they had heard out of doors. I did not advert to the report of the commissioners to which my friend has in terms adverted; but I did advert to reports which every body must have heard, and which certainly had prevailed much to the prejudice of the person against whom these charges were preferred. I cannot, however, think it was matter of blame in the commissioners that they published their report at the time when they did so; they ought not to be biassed by any consideration of circumstances of this sort as to the time when that duty to the public which they were bound to discharge should be performed. It was not their fault that the trial of this cause had been so long delayed; it certainly was their bounden duty, as soon as they were prepared for the execution of that trust which was reposed in them, to execute it, and I hardly think (although it struck those interested for the defendant as a hardship upon him) that the commissioners would have been satisfied in delaying the performance of their duty of publishing

their report, on account of the particular case of the gentleman who is now to receive your lordships' judgment.

If there were the slightest reason to suppose that the publication of that report, and the effect which it produced in the public mind, had any connexion with the verdict of the jury—if upon the evidence which his lordship has just read I could entertain the slightest doubt of the guilt of the defendant—I should be the first to request your lordships that he might have the benefit of a rehearing, and that that which might by possibility have been produced, by the prejudice of the public, might not operate injuriously to him. But, my lords, it is impossible for a man possessed of even the most common understanding, after hearing the report which his lordship has just read to the Court, to entertain the slightest doubt that the guilt imputed by the indictment to the defendant has been brought home to him by incontrovertible evidence—by evidence which in its own nature cannot be supposed to be false—by evidence which if false he had the most ample means of refuting. Your lordships will observe that this indictment, supported as it is by the evidence, not only imputes to the defendant that he entered into a corrupt contract with Mr. Higgins to share with him the profits which Mr. Higgins contrived to make upon the supply of provisions, but that he entered into this contract, through the agency of another person, Mr. Hugh Rose, who was a participator in the same fraud, although he could not (for reasons to which I adverted at the trial) be joined in this indictment.

Mr. Higgins was the person by whom in the first instance, I proved the guilt of the defendant. There was no imputation cast upon the evidence of Mr. Higgins except that he was himself a participator in the same fraud. I took the liberty, at the trial,* of doing that which I shall do in one word now; I shall distinguish the case of Mr. Higgins from the case of an accomplice, who, having a crime fixed upon him, comes forward to say, "it is true I committed this crime, but if you will let me off I will shew you who was concerned with me." That was not the case of Mr. Higgins, because he proved the guilt of the defendant, in which he stated himself to be concerned, and, unless he spoke truly of the guilt of the defendant, he was himself not an accomplice. That is the distinction between the case of Mr. Higgins and the case of a common accomplice.

But why do I waste your lordships time in speaking upon this? Mr. Hugh Rose was in the kingdom—he was attending the Court; and if that which Mr. Higgins stated to have passed from Mr. Jones, through the intervention of Mr. Rose, to him were not true; if that relation, which fixed the same degree of guilt upon Mr. Rose as upon Mr. Jones, and gave Mr. Rose as strong an interest to support the innocence of Mr. Jones, as any man would

have to support his own were not true; if the charge was not truly brought against Mr. Jones, why was not Mr. Rose called to contradict Mr. Higgins?

It would be wasting your lordships time to observe further upon the sufficiency of the evidence for the conviction, indeed upon the impossibility of suggesting a doubt in the case. Mr. Winter stated, that he called upon Mr. Jones, by his desire, to communicate to him the amount of the profits Mr. Higgins had made. What had Mr. Jones to do with the amount of the profits Mr. Higgins made, if Mr. Jones was not to share them? The interests of the two parties were in direct opposition to each other. The object of Mr. Jones *should* have been to keep down Mr. Higgins's profits, if their transactions were honest: the object of Mr. Higgins *must* have been to conceal from Mr. Jones the enormity of those profits: but, instead of his thus acting, you find him communicating to Mr. Jones, the amount of those profits. If any further confirmation were wanted look to what they call the American adventure. The whole transaction not being yet wound up, something was still to be done; and you have a further sum of 800*l.* paid by Mr. Higgins to Mr. Jones on account of the profits of this adventure, and a receipt from Mr. Jones to Mr. Higgins for that sum. Is not that a sufficient confirmation (if any were needed) of this story? Here was money paid by Mr. Higgins to Mr. Jones: on what account? What was the situation in which these two persons stood with relation to each other? Mr. Higgins was to supply the provisions and shipping, and Mr. Jones was to pay him for his supplies. In the course of that transaction Mr. Jones might, while acting for the Crown and contracting with him, be indebted to Mr. Higgins: but it is impossible to conceive, that any debt could arise from Mr. Higgins to Mr. Jones, unless through the corrupt agreement which we have charged.

I beg your lordships' pardon for having called to your attention the manner in which this case was proved. I think after reading the evidence, there cannot be the slightest doubt upon any man's mind. It remains for your lordships to determine by what punishment an offence of this sort shall be visited.—It is not for me to suggest it to your lordships; we all know the different species of punishment that may be inflicted. All that I feel justified in doing, having done something of the same sort in a former instance, is to point out those circumstances of the case which may possibly incline the Court rather to one than to another species, and to show how far the civil rights of the parties concerned may still be affected.

Your lordships will recollect the case of Mr. Davison,* that he receiving a compensation from government for a certain check which it was his duty to exercise upon the contractors,

had misconducted himself by sending in a false account of goods as furnished by other persons, when in fact he had supplied them himself. It was evident, therefore, that he had withdrawn that check from the public. He had, notwithstanding, received a considerable commission upon that account. There was no civil claim upon him to recover back that commission; but justice required that he should not be remunerated for services he had not performed; and yielding to that, which I believe the civilians call an imperfect obligation, he did restore the pay he had not earned, and the Court considered that in the judgment they pronounced against him. The case would have been different, if the Crown, who had paid that sum to Mr. Davison, had had the means of recovering it by civil process; for it would have been unjust first to visit him in the shape of a fine, because he had received that sum of money, and then to put the law in motion against him for the purpose of recovering back that money. I think it right, therefore, to state to your lordships how, in my view of the case, Mr. Jones stands with respect to this money. As commissary-general, Mr. Jones was bound by his duty to purchase from others, that which was wanted for the supply of the troops: the prices at which he purchased those goods from others he charged to the government. Supposing, therefore, Mr. Higgins to have charged the commissary one million, for what he furnished, the commissary would receive from government one million. But when Mr. Jones comes to make up his accounts with Mr. Higgins, he, instead of paying Mr. Higgins the one million, as he ought to do, and which he represented to government that he had done, keeps back one half of what Mr. Higgins states to be his profits, amounting to 87,000*l.* sterling. He charges that money to government as if he had paid it, but in fact he had never paid and never intends to pay it. This is for your lordships' consideration. It appears to me that that money, if it has been received by Mr. Jones from government, is money had and received by him to the use of government; or that, if it has not been received but remains a supposed debt from government to him, it never can be allowed to him: in other words, his charge against government upon the whole is for money disbursed upon their account; this money he never did disburse, and therefore, if he has received it from government he has received it wrongfully; if he has not received it, he never can recover it; and in my present view of the case it remains either a civil debt from him to government if he has received it, or if he has not received it, any claim which he may suppose himself to have against government, he assuredly has not. I trust your lordship will excuse me for entering somewhat at large into this consideration, because it appears to me that it might weigh with your lordships in considering what sentence you should pass upon Mr. Jones.

I have only now shortly to submit to the

Court some remarks upon the extent of this offence. It must have occurred to your lordships that Mr. Higgins himself was the purchaser, in the first instance, of the greater part of the stores before he rendered them to the commissary, on behalf of government. He established a house, for the purpose of making those purchases: that house was composed of Tully Higgins his brother, Nathaniel Winter, and a brother of Hugh Rose. It was proved that that house bought the provisions for him of the merchants; that they charged him, five per cent commission for making the purchases, and then they handed over the provisions so purchased to him; and he when he had paid them the price which they gave and their five per cent, rendered them to the commissary at such an advanced price as produced a profit, in the course of nine months, upon little more than a million, of 306,000*l.* currency. That, your lordships see, is an advance of thirty per cent.

His lordship put a very material question to the witness, Nathaniel Winter. That which you purchased for Matthew Higgins, upon which you charged a commission of five per cent, would you not have purchased for government upon the same terms, and would you not, having purchased these things of the merchants, at the same terms have supplied them to government, contenting yourself with your five per cent? Mr. Winter hesitated a little in answering; but having the question pressed upon him, he was obliged at last to say (and in truth it was not necessary he should say it) that certainly he would have done it.* Then, my lords, the case stands thus; that, for no other purpose whatever than adding this thirty per cent profit, Mr. Higgins stands between government and those from whom the provisions might have been procured at a lower rate. He adds to the price, at which they might have been rendered to government, that thirty per cent for no benefit whatever to be derived to government; for the witness admitted that the merchants who supplied Mr. Higgins would have supplied government at the same price at which he supplied Mr. Higgins, that mercantile house taking to itself a fair remuneration. Mr. Higgins, however, chooses to take that to himself which might have passed to government at the same price; and having taken it from the merchants at that price, he adds to it a profit of thirty per cent. And why? not merely to gratify himself, my lords, but in order that he might be enabled to carry into execution the corrupt contract which the defendant had made with him; that the profit he derived from the adventure might be divided between them; that he might be able to render a moiety in the first instance to Mr. Jones, and a moiety of what remained to Mr. Rose.

My lords, I cannot conceive any fraud bearing more directly or more largely upon the interests of the public than such a transaction

as this. Your lordships must see the extent to which frauds of this kind are likely to go. You must see how important it is that such frauds should be corrected: how they are to be corrected I leave to your lordships. I am sure that you will do that which justice requires, I am sure that you will not overlook the interests of the country.—I am sure that you will not be restrained by any consideration from inflicting such a punishment upon the defendant as the nature of the case demands. At the same time I do not desire your lordships to be unmindful of his bodily sufferings.

Lord Ellenborough.—Let the defendant be committed to the custody of the marshal, and brought up to receive the judgment of this Court on Monday next.

JUNE 19th.

Mr. Justice Grose.—Valentine Jones; you are brought here to receive the sentence of this court for the very great offence of which you have been convicted.

[The learned judge, after stating the substance of the several counts of the indictment, of which see the abstract, at the commencement of the trial, vol. x. p. 251, proceeded as follows.]

Such was the charge of fraud and speculation which has been preferred against you, and upon your plea of not guilty you were convicted of it under circumstances which have been fully stated in evidence. The facts were incontrovertible; they can leave no doubt of your guilt; especially when we recollect that his lordship and the jury were most properly warned to dismiss from their minds the recollection of all that had been improperly stated upon the subject, and might have been seen by them in the publications of the day.

The pernicious consequences of your crimes were so ably and lucidly explained in this place a few days since by his majesty's attorney-general, that it is hardly necessary for me to make any comment upon them; indeed recollecting the particular instructions you received upon your appointment, and the very honourable and proper advice given you from another quarter, it is impossible to suppose that you could be ignorant of your duty; and one cannot but see the conscious guilt you felt when you wrote that letter in 1802 to Mr. Glassford. In short, you stand convicted of having illegally and corruptly appropriated to your own use, in violation of your duty and in fraud of his majesty, the sum of

87,000*l.*; a larger sum than has ever appeared in this or in any other court to have been amassed by any public offender within our experience: and this sum was but a moiety of that which was divided between you and others.

Of a punishment adapted to the offence we find no precedent, for we find no precedent of an offence of this sort so enormous as yours. What proceedings elsewhere may be instituted it is not for us to suggest or inquire: it is only for us to consider of and to provide such punishment, not as may be likely to correct, for it may be difficult to correct a mind so debased by avarice, and the love of sordid lucre, as yours must be, but such as may warn others employed in the public service, and teach them that honesty is the best policy, and that however practices of this sort may be concealed and unpunished for a day, there are modes by which the most artful may be detected.

We have heard in your favour testimony of good character such as it rarely falls to the lot of any human being to deserve. Under all the circumstances some of those affidavits appear to be hardly founded in truth but if they be founded in truth, we can only lament that you did not sufficiently value a good character to prevent your casting upon it a stain which the constant efforts of the longest life can never wipe away; and most assuredly, attending to the times in which, and the modes by which, your frauds have been conducted, it is difficult to conceive that that character can be well deserved. We are led to suspect it could be attained only by the most consummate hypocrisy. Be that as it may, offences of such pernicious example to the public can never pass without signal punishment. There never has occurred in my practice an instance of fraud so enormous. In your case we look in vain for any sign of repentance or any sense of shame; for a mind so void of shame it must be difficult to affix an adequate punishment; but others may be taught by your example a lesson salutary to them and beneficial to the state: for this purpose, taking all the circumstances of your case into consideration—This Court for the offence you have committed doth order and adjudge:

That you be committed to his majesty's gaol of Newgate, and there be imprisoned for the space of three years; and this Court doth further order and adjudge, by virtue of the statute^a in that case made and provided, that you be adjudged incapable of serving his majesty in any office or capacity, civil or military, whatever.

^a 42 Geo. III c. 85.

